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महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष २, अंक ५०] **गुरुवार ते बुधवार, डिसेंबर १५-२१, २०१६/अग्रहायण २४-३०, शके १९३८** **[पृष्ठे ८०, किंमत : रुपये २३.००**

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. ए. आर. महाजन, सदस्य, औद्योगिक न्यायालय, मुंबई यांचा दिनांक ३ मार्च २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३३१/१२.—श्री. ए. आर. महाजन, सदस्य, औद्योगिक न्यायालय, मुंबई यांना त्यांच्या दिनांक ३ मार्च २०१२ रोजीच्या अर्जासंदर्भात कळविण्यात येते की, त्यांची दिनांक ५ मार्च २०१२ व ७ मार्च २०१२ रोजीची ३ दिवसांची अर्जित रजा, रजेच्या मागे दिनांक ४ मार्च २०१२ आणि रजेच्या पुढे दिनांक ८ मार्च २०१२ हे सुट्टीचे दिवस जोडून मंजूर करण्यात आली आहे.

श्री. ए. आर. महाजन हे रजेवर गेले नसते तर त्यांची सदस्य, औद्योगिक न्यायालय, मुंबई या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. ए. आर. महाजन हे सदस्य, औद्योगिक न्यायालय, मुंबई या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक ७ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. ए. पी. भावठाणकर, न्यायाधीश, कामगार न्यायालय, मुंबई यांचा दिनांक २७ फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३३६/१२.—श्री. ए. पी. भावठाणकर, न्यायाधीश, कामगार न्यायालय, मुंबई यांना त्यांच्या दिनांक २७ फेब्रुवारी २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक ५ मार्च २०१२ ते दिनांक २२ मार्च २०१२ पर्यंत एकूण १८ दिवसांची अर्जित रजा, रजेच्या मागे दिनांक ४ मार्च २०१२ व रजेच्या पुढे दिनांक २३, २४ व २५ मार्च २०१२ हे सुट्टीचे दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात येत आहे.

श्री. ए. पी. भावठाणकर, हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, मुंबई या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. ए. पी. भावठाणकर, न्यायाधीश, कामगार न्यायालय, मुंबई या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १२ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. एस. एम. मेनजोगे, न्यायाधीश, कामगार न्यायालय, वर्धा यांचा दिनांक २५ फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३३७/१२.—श्री. एस. एम. मेनजोगे, न्यायाधीश, कामगार न्यायालय, वर्धा यांना त्यांच्या दिनांक २५ फेब्रुवारी २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक २३ फेब्रुवारी २०१२ ते दिनांक ९ मार्च २०१२ पर्यंत १६ दिवसांची अर्जित रजा, रजेच्या पुढे दिनांक १० व ११ मार्च २०१२ हे सुट्टीचे दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात आली आहे.

श्री. एस. एम. मेनजोगे, हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, वर्धा या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. एस. एम. मेनजोगे हे न्यायाधीश, कामगार न्यायालय, वर्धा या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १२ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. डी. बी. पतंगे, न्यायाधीश, कामगार न्यायालय, औरंगाबाद यांचा दिनांक २० फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३३९/१२.—श्री. डी. बी. पतंगे, न्यायाधीश, कामगार न्यायालय, औरंगाबाद यांना त्यांच्या दिनांक २० फेब्रुवारी २०१२ रोजीच्या अर्जासंदर्भात कळविण्यात येते की, त्यांची दिनांक १३ फेब्रुवारी २०१२ ते दिनांक १८ फेब्रुवारी २०१२ पर्यंत एकूण ६ दिवसांची परिवर्तीत रजा, रजेच्या मागे दिनांक ११ व १२ फेब्रुवारी २०१२ आणि रजेच्या पुढे दिनांक १९ फेब्रुवारी २०१२ हे सुट्ट्यांचे दिवस जोडून मंजूर करण्यात आली आहे.

श्री. डी. बी. पतंगे हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, औरंगाबाद या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. डी. बी. पतंगे हे न्यायाधीश, कामगार न्यायालय, औरंगाबाद या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १२ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. ए. टी. आमलेकर, सदस्य, औद्योगिक न्यायालय, औरंगाबाद यांचा दिनांक २० फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३४०/१२.—श्री. ए. टी. आमलेकर, सदस्य, औद्योगिक न्यायालय, औरंगाबाद यांना त्यांच्या दिनांक २० फेब्रुवारी २०१२ रोजीच्या अर्जासंदर्भात कळविण्यात येते की, त्यांची दिनांक १७ फेब्रुवारी २०१२ ते १८ फेब्रुवारी २०१२ रोजीची २ दिवसांची परिवर्तीत रजा, रजेच्या पुढे दिनांक १९ फेब्रुवारी २०१२ रोजीच्या सुट्टीला जोडून मंजूर करण्यात येत आहे.

श्री. ए. टी. आमलेकर हे रजेवर गेले नसते तर त्यांची सदस्य, औद्योगिक न्यायालय, औरंगाबाद या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. ए. टी. आमलेकर हे सदस्य, औद्योगिक न्यायालय, औरंगाबाद या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १२ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. एस. बी. पवार, न्यायाधीश, कामगार न्यायालय, अमरावती यांचा दिनांक २७ फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३४१/१२.—श्री. एस. बी. पवार, न्यायाधीश, कामगार न्यायालय, अमरावती यांना त्यांच्या दिनांक २७ फेब्रुवारी २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक ७ मार्च २०१२ ते दिनांक ९ मार्च २०१२ पर्यंत एकूण ३ दिवसांची अर्जित रजा, रजेच्या पुढे दिनांक १० व ११ मार्च २०१२ हे सुट्टीचे दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात आली आहे.

श्री. एस. बी. पवार हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, अमरावती या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. एस. बी. पवार हे न्यायाधीश, कामगार न्यायालय, अमरावती या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १२ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. डी. एच. देशमुख, प्रशासकीय सदस्य, औद्योगिक न्यायालय, ठाणे यांचा दिनांक ५ मार्च २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३७१/१२.—श्री. डी. एच. देशमुख, प्रशासकीय सदस्य, औद्योगिक न्यायालय, ठाणे यांना त्यांच्या दिनांक ५ मार्च २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक २७ फेब्रुवारी २०१२ ते ३ मार्च २०१२ पर्यंत एकूण ६ दिवसांची अर्जित रजा, रजेच्या मागे दिनांक २५ व २६ फेब्रुवारी २०१२ आणि रजेच्या पुढे दिनांक ४ मार्च २०१२ हे सुट्ट्यांचे दिवस जोडून मंजूर करण्यात आली आहे.

श्री. डी. एच. देशमुख, प्रशासकीय सदस्य, हे रजेवर गेले नसते तर त्यांची प्रशासकीय सदस्य, औद्योगिक न्यायालय, ठाणे या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. डी. एच. देशमुख, प्रशासकीय सदस्य, औद्योगिक न्यायालय, ठाणे या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १६ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. पी. डब्ल्यू. भूयार, सदस्य, औद्योगिक न्यायालय, कोल्हापूर यांचा दिनांक ५ मार्च २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ३७२/१२.—श्री. पी. डब्ल्यू. भूयार, सदस्य, औद्योगिक न्यायालय, कोल्हापूर यांना त्यांच्या दिनांक ५ मार्च २०१२ रोजीच्या अर्जासंदर्भात कळविण्यात येते की, त्यांची दिनांक १२ मार्च २०१२ ते १४ मार्च २०१२ पर्यंत एकूण ३ दिवसांची अर्जित रजा, रजेच्या मागे दिनांक १० व ११ मार्च २०१२ हे सुट्टीचे दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात आली आहे.

श्री. पी. डब्ल्यू. भूयार, हे रजेवर गेले नसते तर त्यांची सदस्य, औद्योगिक न्यायालय, कोल्हापूर या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. पी. डब्ल्यू. भूयार, सदस्य, औद्योगिक न्यायालय, कोल्हापूर या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक १६ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. व्ही. डी. पिंपळकर, न्यायाधीश, ४ थे कामगार न्यायालय, ठाणे यांचा दिनांक ५ मार्च २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ४१०.—श्री. व्ही. डी. पिंपळकर, न्यायाधीश, ४ थे कामगार न्यायालय, ठाणे यांना त्यांच्या दिनांक ५ मार्च २०१२ रोजीच्या अर्जासंदर्भात कळविण्यात येते की, त्यांची दिनांक ३१ मार्च २०१२ ते दिनांक ७ एप्रिल २०१२ पर्यंत एकूण ८ दिवसांची अर्जित रजा, रजेच्या पुढे दिनांक ८ एप्रिल २०१२ हा सुट्टीचा दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात येत आहे.

श्री. व्ही. डी. पिंपळकर, हे रजेवर गेले नसते तर त्यांची न्यायाधीश, ४ थे कामगार न्यायालय, ठाणे या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. व्ही. डी. पिंपळकर, हे न्यायाधीश, ४ थे कामगार न्यायालय, ठाणे या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक २१ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्रीमती एस. व्ही. सुवर्णा, सदस्य, औद्योगिक न्यायालय, ठाणे यांचा दिनांक ७ मार्च २०१२ व ६ फेब्रुवारी २०१२ रोजीचे अर्ज.

रजा मंजुरी आदेश

क्रमांक ४११.—श्रीमती एस. व्ही. सुवर्णा, सदस्य, औद्योगिक न्यायालय, ठाणे यांना त्यांच्या दिनांक ७ मार्च २०१२ व ६ फेब्रुवारी २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक २८ जानेवारी २०१२ ते २९ जानेवारी २०१२ पर्यंत एकूण २ दिवसांची वाढीव अर्जित रजा व दिनांक ३० जानेवारी २०१२ ते ४ फेब्रुवारी २०१२ पर्यंत एकूण ६ दिवसांची परिवर्तीत रजा, रजेच्या पुढे दिनांक ५ फेब्रुवारी २०१२ च्या सुट्टीला जोडून मंजूर करण्यात आली आहे.

श्रीमती एस. व्ही. सुवर्णा, सदस्य, ह्या रजेवर गेल्या नसत्या तर त्यांची सदस्य, औद्योगिक न्यायालय, ठाणे या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्रीमती एस. व्ही. सुवर्णा, सदस्य, औद्योगिक न्यायालय, ठाणे या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक २१ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. ए. एम. खान, न्यायाधीश, कामगार न्यायालय, यवतमाळ यांचा दिनांक १३ फेब्रुवारी २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ४१२.—श्री. ए. एम. खान, न्यायाधीश, कामगार न्यायालय, यवतमाळ यांना त्यांच्या दिनांक १३ फेब्रुवारी २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक ३० जानेवारी २०१२ ते दिनांक १० फेब्रुवारी २०१२ पर्यंत एकूण १२ दिवसांची अर्जित रजा, रजेच्या पुढे दिनांक २८ व २९ जानेवारी २०१२ आणि रजेच्या पुढे दिनांक ११ व १२ फेब्रुवारी २०१२ हे सुट्ट्यांचे दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात येत आहे.

श्री. ए. एम. खान, हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, यवतमाळ या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. ए. एम. खान, हे न्यायाधीश, कामगार न्यायालय, यवतमाळ या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक २१ मार्च २०१२.

औद्योगिक न्यायालय, महाराष्ट्र, मुंबई

वाचा.—श्री. प्र. मा. खंबायते, न्यायाधीश, कामगार न्यायालय, सातारा यांचा दिनांक १ मार्च २०१२ रोजीचा अर्ज.

रजा मंजुरी आदेश

क्रमांक ४१३.—श्री. प्र. मा. खंबायते, न्यायाधीश, कामगार न्यायालय, सातारा यांना त्यांच्या दिनांक १ मार्च २०१२ रोजीच्या अर्जांसंदर्भात कळविण्यात येते की, त्यांची दिनांक ८ मार्च २०१२ ते दिनांक १० मार्च २०१२ पर्यंत एकूण ३ दिवसांची अर्जित रजा, रजेच्या पुढे दिनांक ११ मार्च २०१२ हा सुट्टीचा दिवस जोडून मुख्यालय सोडण्याच्या परवानगीसह मंजूर करण्यात येत आहे.

श्री. प्र. मा. खंबायते, हे रजेवर गेले नसते तर त्यांची न्यायाधीश, कामगार न्यायालय, सातारा या पदावरील स्थानापन्न नियुक्ती पुढे चालू राहिली असती.

रजेचा उपरोक्त कालावधी संपल्यावर श्री. प्र. मा. खंबायते, हे न्यायाधीश, कामगार न्यायालय, सातारा या पदावर स्थानापन्न होतील.

आदेशावरून,

दि. बा. उन्हाळे,
प्रभारी प्रबंधक,
औद्योगिक न्यायालय, महाराष्ट्र, मुंबई.

मुंबई,
दिनांक २१ मार्च २०१२.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

Before Shri A.R MAHAJAN, Member

COMPLAINT (ULP) No. 229/2008.— Maharashtra Samarth Kamgar Sanghatana, D. N. Nagar, Andheri (W.), Mumbai,—Complainant—*Versus*, (1)Hotel The Leela Kempinski, Mumbai Shahar, Mumbai 400 059. (2) Mr. Salil A. Desai, Head, Huma Resources, The Leela Kempinski, Mumbai—Respondents.

Coram.–– Shri A. R. Mahajan, Member.

Appearances.— Shri L.R.Mohite, Adv. for the complainant.
Shri K.T.Rai, Adv. for the respondents.

Oral Judgment

(Delivered on 10/01/2012)

1. Complainant union MSKS (Maharashtra Samarth Kamgar Sanghatana) filed this complaint u/s.28 read with items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 against the employer Hotel The Leela Kempinski, Mumbai for the letter indulging in unfair labour practices by illegally deducting Rs. 2000 from the salary of the member employees of the complainant union who are 167 in number in the month of March, 2008.

2. The facts leading to the present complaint, in shorts, can be stated as under:-

Complainant is a registered Trade Union under the provisions of the Trade Unions Act, 1926.Respondent No.1 is a Hotel Industry and had engaged near about 252 workman in the undertaking. It has accommodation rooms, restaurant etc. Respondent No.2 is the Head of the Human Resources Department of the Hotel who is looking after day to day functioning of the hotel and is responsible for unfair labour practices as stated in the complaint. It is the case of the complainant that the workman of the respondent hotel had approached them in the 2nd week of september 2005 with the request of becoming members of the union with a view to get their grievances resolved through management and accordingly the majority of the workman have become members of the complainant union by paying membership subscription. The respondents were informed accordingly of the formation of the union on 23rd September 2005. Previously, these employees of the respondents were members of the Bhartiya Kamgar Sena, a recognised union with the respondent. It is their case that all the members of the Bhartiya Kamgar Sena have resigned from their membership as such and have become member of the complainant union Therefore, complainant union informed to the respondent that their membership subscription should not be deducted from the salaries of these employees of the respondent since they have switched over to the complainant union. Letter was sent accordingly on 7th October 2005 as well as on 18th October 2005. It is submitted by the complainant union that Officers' Association comprising near about 167 workman was formed deliberately and intentionally inspite of the fact that they were from the category of the workman within the meaning of section 2(s) of Industrial Disputes Act. It was formed in order to deprive them of the benefits of the workman category. The general Secretary of Bhartiya Kamgar Sena was shown as President of the Association. It is the case of the complainant union that this Association has no legal santity. It is not registered with any of the authority under the provisions of the statute. Rs.50 used to be deducted from the salary of these members of the Association every month. It used to go to the Officers Association. It is case of the complainant union that even the members of these Association had resigned from the membership of the Association and have joined the complainant union.The management was therefore, informed by the complainant union that such deduction of Rs.50 per month should be stopped forthwith. Even the individual workman who have become members of the complainant union and who had tendered their resignation from the membership of the Association they too

had written individual letters to the management to stop the deduction of Rs.50 per mensem. However, this practice was continued according to the union by the management. Again on 23rd March 2006 a letter was addressed to the management to stop this illegal deduction.

3. It is the case of the complainant union that majority of these workman have joined this union. The complainant union had preferred an application MRTU No.18 of 2006 before the Industrial Court, Mumbai for cancellation of recognition of Bhartiya Kamgar Sena which according to the complainant union was pending when the complaint was filed (said application as of now stands dismissed). It is the case of the complainant union that by its letter dated 7th March 2008, the respondent had informed its workman that the management has revised pay-scale their newly revised salary was deposited in the bank account wherein it was found that respondent No.1 and 2 have deducted Rs.2000 towards officers' Association contribution, and therefore, complainant union wrote another letter to the management on 18th March 2008 protesting that it amounted to illegal deduction from the salary of its member workman i.e. to say the amount of Rs.2000 deducted from the salary of 167 employees. Thus, according to the complainant union by illegally deducting the amount of Rs. 2000 from the salary in the month of March, 2008 and credited into the account of Officers' Association amounts to unfair labour practice within the meaning of items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971, and therefore, the union has sought declaration regarding unfair labour practices and also seeking direction against the respondents to refund the amount of Rs.2000 which was deducted in the month of March, 2008 from the salary of 167 employees which according to the complainant union had become its members by resigning from the membership of the Association.

4. The respondent appeared in the matter and filed their written statement, which is at Exh. C-2. It is the case of the respondents that there is no cause of action to prefer this complaint and as such it is not maintainable and it is totally misconceived. It is the case of the respondent as contended by them that the persons whose names figure in Annexure A are not the workman u/s. 2(s) of Industrial Disputes Act and They are not employees within the meaning of section 3(*5*) of the MRTU and PULP Act, 1971. It is contended by the respondents that they are all performing supervisory, managerial functions and draw salary of more than Rs.1600 per mensem. The amount is already deducted from the salary of the members of the complainant union and therefore complaint has become infructuous as such for the grounds taken and reasons stated, the respondents prayed for dismissal of the complaint with costs. The documentary evidence which has been relied upon by the complainant party is in the form of 'union formation letter dated 23rd September 2005 (Exh.U-11), Letter regarding resignation from membership of workman from Bhartiya Kamgar Sena dated 07th October 2005 (Exh.U-9), Similar letter Exh.U-12, letter written by union President to the management to stop deduction, another letter of similar nature dated 02nd January 2006 to stop deduction of the employees of the respondent of Rs.50 from their salary towards contribution to the Officers' Association, another letter regarding the same subject matter dated 23rd March 2006, Letter to one of the employees Mr.Sadanand Rane giving particulars of the salary given to him Exh.U-10, letter regarding revised pay scale to Mr. Salil Desai dated 18th March 2008, Letter by the General Secretary of the Union of the Union Shri Jayawant Parab dated 11th March 2008 calling upon the respondents not to indulge in unfair labour practices, Salary slip of Mrs.Kunda S.Ghogale, Supervisor tailor deducting the amount of Rs. 2000. from her salary in the month of March, 2008. The documentary evidence on the other hand relied upon by the respondents is in the from of list Exh.C-8 showing deduction of Rs.2000 from the salary of the employees of the respondents, Exh.C-9 voucher dated 17th March 2008, Exh.C-10 order of Hon'ble High Court in Writ Petition No.1183 of 2008, letter of registration of Hotel Leela Officers Association with the registrar of Trade Union dated 29th December 2004, the order of Hon'ble High Court in Appeal No.105 of 2011, dated 31st March 2011.

5. This Court then framed issues considering the pleadings of the rival parties on 15th August 2008. Issue No.1 is regarding unfair labour practice alleged to have been played by the respondents by deducting Rs.2000 from the salary of the concerned employees in the month of March, 2008. Second is regarding entitlement of the reliefs as claimed for by the complainant union. Besides, the documentary evidence, to substantiate their claim there is affidavit of one Shri Vinod Anant Desai in lieu of examination in chief which is at Exh.U-6 on behalf of the complainant and to counter the case of the complainant union, there is affidavit at Exh.C-7 in lieu of examination in chief of Shri Sadashiv Bangera on behalf of the respondent employer. Besides these two affidavits there is no other evidence led by the parties. As such, I heard Learned Advocate Shri Mohite for the complainant union and Learned Advocate Shri K.T.Rai for the respondents. Learned advocate Shri Mohite argued mainly on the facts as pleaded by the complainant in the complaint as to how the membership has been switched over to complainant union from Bhartiya Kamgar Sena union. He submitted that the members of the Officers' Association had resigned and they had joined the complainant union and that Officers' Association has no legal sanctity and it has no legal entity as such. It is the management which has propelled the management of the Officers' Association by bringing them in the category of supervisor or above that i.e. managerial category by revising pay scales of 167 employees and then deducting the amount from their salary of Rs.50 per mensem and in the month of March 2008 Rs.2000 which they were not entitled to do so. He submitted that said amount of Rs.2000 be refunded to the concerned employees and management can very well recover it from the Officers' Association, and therefore, he prayed for allowing the complaint with costs. Learned advocate Shri K.T.Rai for the respondents submitted that it is a donation which is not equivalent to membership contribution, and therefore, it cannot be called as deduction from the wages. Secondly, the Officers' Association has not been made party to the complaint, as such complaint suffers from non-joinder of necessary party. He invited the attention of this Court to the cross-examination of the complainant's witness. He invited the attention of this Court to document Exh.C-11 produced by the respondents and the stipulations contemplated therein. There is no unfair labour practice, as such on the part of the respondents. He relied upon reported decision namely 1985 LAB.I.C.242 in case of Balmer Lawrie Workers Union Bombay and another *Versus* Balmer Lawrie and Co.Ltd. And others. and decision in Application (MRTU) No.18 of 2006 passed by Learned Shri S. K. Shalgaonkar, Member, Industrial Court, Mumbai. After having heard both the advocates Shri Mohite for the complainant union and Shri K.T.Rai for the respondents, having considered oral and documentary evidence adduced by the parties and after going through the decisions relied upon by Learned Advocate Shri K.T.Rai and various orders which are passed by Hon'ble High Court and order passed by my brother Judge Shri Shalgaonkar while dismissing the application for D-recognition, following issues arise for my consideration and I record my findings against them for the reasons stated below.

	Issues	*Findings*
1.	Whether the complainant union proves that deduction of Rs.2000 from the salary of employees who had become members of the Officers' Association is illegal and as such amounts to unfair labour practice within the meaning of items 9 and 10 of Schedule IV of the MRTU and PULP Act,1971 ?	In the negative.
2.	If yes, whether the complainant is entitled to the reliefs, declaratory as well as consequential ?	In the negative.
3.	What order ?	Complaint stands dismissed.

Reasons

6. *Issues No.1 and 2*.— There is an affidavit of Shri Vinod Desai which is at Exh.U-6 on behalf of the complainant. Shri Vinod Desai happens to be the employee of the respondent No.1. He states that workman of the respondent No.1 had become members of the complainant union and the intimation was duly given to the respondent No.1 on 23rd September 2005. Earlier they were members of the Bhartiya Kamgar Sena, a recognised union. He states that it is now recognised only on paper since it has no membership at all. He states that he has become menber of the complainant union since he has tendered resignation from the membership of Bhartiya Kamgar Sena. He then informed to the respondent that for Bhartiya Kamgar Sena there should not be any deduction from his salary of membership subscription. It is his case as stated by him in his affidavit that respondent No.1 Hotel has formed Officers' Association having 167 workman as its members and it was deliberate and intentional act knowing fully well that they are workman and fall within the category of workman under section 2(s) of Industrial Disputes Act. It is to deprive them from the benefits of workman category this Association has been fromed. The General Secreatary of Bhartiya Kamgar Sena was shown as President of the said Addociation. There is no legal entity as such it is not a registered union. As it appears from his testimony that Rs.50 used to be deducted from each of the member of the Association. It is his case that the member of the Association had tendered their resignation from the Association and have become members of the complainant union. The respondent was intimated duly and accordingly. He refers to various correspondence which the individual workman and complainant union had made with the respondents to stop the deduction for Bhartiya Kamgar Sena towards membership subscription. In para 12 and 13 of his affidavit, he speaks about deduction of Rs.2,000, a contribution towards Officers' Association. thereafter, it appears that there was correspondence made by the complainant union and individual employees of the respondent in respect of the alleged illegal deduction of Rs. 2,000. from their salary. The witness was cross-examined by the respondent's advocate Shri K.T.Rai. In the cross-examination it reveals that this Association is still in existence and witness Shri Vinod Desai was one of the members of theAssociation.He also admits in the cross-examination that there were two memorandum of understandings one for the workman and another for the Association whereby there was pay revision of the employees of the respondent. He in para 9 of the cross-examination admits that he has received full salary for the month of February 2008. He denied that towards the amount of Rs.2,000. was deducted. but himself states that the amount was paid to Bhartiya Kamgar Sena for there was agreement between management and the union. He also admits that there was separate settement between the management and Bhartiya Kamgar Sena for the employees of bargain able category. This amount of Rs.2000 was deducted and was credited to the account of Bhartiya Kamgar Sena Officers Association. It is true that according to him, Officers Association has not been made party to the complaint.

7. Learned advocate Shri K.T.Rai in the cross-examination had asked some material questions to this witness, especially about Shri Virendra Dubey who happened to be captain in the respondent hotel. It was held that this captain was not the workman within the meaning of section 2(s) of Industrial disputes Act as such not an employee within the meaning of section 3(5) of the M.R.T.U. and P.U.L.P. Act, 1971. It is also a fact which has been undisputed that there was an application preferred by the complainant union for cencellation of recognition of Bhartiya Kamgar Sena under the M.R.T.U. and P.U.L.P. Act, 1971 and the application has attained its finality in the from of dismissal before Industrial Court bearing Application (MRTU) No. 18 of 2006. From this cross-examination, there are two facts which are quite evident that Bhartiya Kamgar Sena still remains the recognised union with the respondent, and second is that the Officers' Association which is affiliated to the Bhartiya Kamgar Sena is still in existence. There is also a fact which is

glaring and which goes to the root of the matter is that to whom the contribution has gone is not made party to the complaint. On behalf of respondent there is vital document which has been brought on recored which is at Exh.C-11-A. One Shri Kiran Pawaskar, President has signed this with Shri Salil Desai as Head- Human Resources with number of persons signing as witnesses to the Memorandum of understanding. In clause 2 of the said Memorandum of understanding, it has been clearly mentioned thus,

> "It is agrred that all those permanent senior supervisors who are beneficiaries of revised general service conditions shall pay an amount of Rs.2,000. (Two Thousand only) as donation to their association and the same shall be deducted at source by the employer and remitted to the association by cross order cheque."

As such, deduction has been made to the tune of Rs.3,92,000, Whether in absedce of Officers' Association Court can direct respondent to remit the amount and refund the same to the individual employees when it had given it to Officers' Association. The witness Mr.Vinod Desai who has been evamined, it appears that at no point of time had objected to deduction so called illlegal or otherwise or any time had objected to deduction of Rs.50/- from his salary towards membership subscription for Officers' Association, and therefore considering these facts his evidence is hardly of any help to the complainant union. it clearly indicates that it is a rivalry between two unions and respondent has been dragged into it unnecessarily and without any cause. Bhartiya Kamgar Sena may be thinking in establishing its clout and strengthening itself over the employees of the respondent. But not in the way in which they are seeking it to be done by filing this complaint and asking for relif as prayed for. Lesrned advocate Shri K.T.Rai relied upon relied decision in 1985 LAB.I.C. 242 in case of Balmer Lawrie Workers Union Bombay and another *V*. Balmer Lawrie and Co.Ltd. And other. It deals with the rights of the recognised union to represent the workman to negotiate on their behalf with the management. From head note 'B' of the said decision, it was held thus by the Hon'ble Apex Court that, "Settlement between management and representative union. Arrears granted under settlement to all workman. Clause in settlement for deduction of 15 % of amountof arrears payable to workman towards union fund is legal." The same analogy can be applies to the facts of the present case, where there is deduction of Rs.2,000. towards donation to the Officers' Association, which is affiliated to Bhartiya Kamgar Sena, which is recognised union. There is also a vital document although it has not been got exhibited by the respondent, that Officers' Association is a registered body, certificate to that effect has been placed on record, may be inadvertently it has remained to have been exhibited. It is a certificate dated 29th December 2004 issued in favour of Hotel Leela Officers' Association with Registration No.A.L.C./Karyasan-17/10036. So it cannot be said that it has no legal entity. As such, I find that deduction of Rs.2,000 from the monthly salary of February paid in March 2008 is not illegal and as such when it is not an illegal deduction and based on the agreement or settement Memorandum of understanding between the concerned employees and the Hotel Management it does not lead to any unfair labour practice. The fairness will have to be looked into from one more aspect of the matter that the amount had not deducted and it remained with the employer, it has been rather remitted to Association. I therefore, answer this issue in the Negative and against the complainant union. Besides that it is to be observed that there are decisions of the Hon'ble Bombay High Court which are mentioned (Supra). In writ petition No.1183 of 2008 by order dated 21st July 2008 Hon'ble Bombay High Court had held that Virendra Dubey, the captain was not an employee within the meaning of Section 3(5) of the M.R.T.U. and P.U.L.P. Act, 1971 and 2(s) of Industrial Disputes Act. Thus, although this case was of individual person, it also applies to the facts and circumstances of the present case, the officers which had become members of the Officers' Association can hardly be said to be a workman within the meaning of section 2(s) of Industrial Disputes Act and as such employee within the meaning of section 3(5) of the M.R.T.U. and P.U.L.P. Act, 1971, and therfore, on this count also the case of the complainant

fails and as such by answering issue No.1 in the Negative and against the complainant union, I hold that complainant union is not entitled to any relief on behalf of the concerned workman for refund of Rs.2,000 which had become allegedly its members and which were the members of the Officers' Association earlier. they are neither entitled to any declaratory relief of unfair labour practice nor any consequential relief as stated in the complaint. I therefore, answer this issue also in the Negative and against the complainant union and as a result, I answer issue no.2 accordingly and issue No.3 also that the complaint stands dismissed with no order as to costs. Hence, the following order.

Order

(1) Complaint stands dismissed.

(2) In the facts and circumstances of the case, there shall be no order as to costs.

A. R. MAHAJAN,
Member,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 10th January 2012.

(S/d/-)
I/c. Registrar,
Industrial Court, Maharashtra, Mumbai.
dated 14th February 2012.

BY THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI A. R. MAHAJAN, MEMBER,
INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

REVISION (ULP) No. 80/2011

In Criminal Complaint (ULP) No. 51 of 2009.—(1) The Indian Smelting and Refining Co. Limited, L. B. S. Marg, Bhandup (W.), Mumbai 400 078, (2) Shri S. G. Dhutia, Sr. Vice President (P. & A.), The Indian Smelting and Refining Co. Ltd, L. B. S. Marg, Bhandup (W.), Mumbai 400 078, (3) Shri H. M. Pharande, General Manager (Personnel), The Indian Smelting and Refining Co. Limited, L. B. S. Marg, Bhandup (W.), Mumbai 400 078, (4) Shri Subhash Chandra Singh, General Manager (Security), The Indian Smelting and Refining Co. Limited, L. B. S. Marg, Bhandup (W.), Mumbai 400 078,—*Applicants*.—V/s.—(1) Shri Sunil Rajaram Bhat, 14/111, MHB. Colony, Vartak Nagar, Thane 400 606, (2) Shri U. W. Sonawane, Judge, Tenth Labour Court, Mumbai, New Admin. Bldg. Bandra (E.), Mumbai 400 051.—*Opponents.*

CORAM.— Shri A. R. Mahajan, Member.

Appearances.— Shri S. S. Acharekar, Advocate for the Applicants.
Shri Sunil Patil, Advocate for the Opponents.

Oral Judgment

(Delivered on 9th January 2012)

1. This revision is arising out of and directed against the order below Exh. C-4, dated 31st January 2011 in Miscellaneous Criminal (ULP) No. 51 of 2009 by which order 10th Labour Court, Mumbai rejected the application filed by the accused to dismiss the complaint on the ground that original Complaint (ULP) No. 124 of 2008 which was preferred by the complainant came to be dismissed on the ground of jurisdiction by the Industrial Court. This was order dated 28th June 2011. It is also agitated before the Learned labour Judge that though belatedly the order below Exh. U-2 in complaint (ULP) No. 124 of 2008 (which has been subsequently dismissed) had been complied with by the accused applicants and therefore, the Criminal Proceeding do not survive and they have become infructuous and therefore, are liable to be dismissed.

2. The facts leading to the present case, in short, can be stated as under :—

That the ULP Complaint was filed under section 28 and 30 of the MRTU and PULP Act, 1971 bearing Complaint (ULP) No. 124 of 2008 (supra) and Items 9 and 10 of Schedule IV have been invoked seeking declaratory as well as consequential reliefs arising therefrom. It was the case of the complainant that respondent No.1 (Present accused) was engaged in manufacturing of copper, brass, bronze, nickel silver sheets, strips and foils and non ferrous alloys etc. The other respondents (rest of the accused) were the persons who were looking after the affairs of the company. Near about 1,000 employees have been engaged in the said activity. The complainant was a supervisor *cum* operator appointed since 9th April 1993, till he was asked not to report for duty in the month of March 2001. At that time, the complainant was drawing salary of Rs. 7, 204 per mensem. It is the case of the complainant that when he was in the third shift on 31st July 2000, the Police Inspector from Mulund Police Station came to the company and with the permission of the Security Officer of the company he was taken in the custody under M. P. D. A. Act, and since then he was in jail. With the order of the Hon'ble High Court he was released on bail. The complainant has written several letters to the company as to why he has been in jail explaining away the circumstances under which he has been taken in custody and as such, he was unable to join duty. It appears that inspite of this fact, when he came out he was prevented from reporting for duty on 17th March 2001 and therefore, he preferred Complaint (ULP) No. 124 of 2008 invoking Item Nos. 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 demanding arrears of wages with reinstatement.

3. It appears that pending hearing and final disposal of this complaint, an application Ex. U-2 for interim relief was moved by the complainant which was partly allowed by my Learned predecessor Shri M. G. Choudhary on 11th July 2008 with the following directions in the operative part *i.e.* either to alow the complainant to resume his duty or deposit his monthly wages in the Court from 19th March 2008 onwards till final disposal of the Complaint. It appears that the present accused who were respondents in the complaint had challenged the order under Exh. U-2 in Writ Petition but they failed in their attempt to challenge this order successfully. In the meanwhile, it appears that for non compliance of this orer dated 11th July 2008, the complainant preferred contempt proceeding under section 48 of the MRTU and PULP Act, 1971 which has been registered as Misc. Criminal Complaint (ULP) No. 51 of 2009. The notices were issued to the accused persons for non compliance of the order below Exh. U-2. It also appears that they had also appeared in the proceeding. The proceedings in Complaint (ULP) No. 124 of 2008 continued and they have ended in favour of the accused persons *i.e.* respondents as the complaint itself came to be dismissed by this Court (*i.e.* by me) on the ground that it is the Labour Court which has jurisdiction and not the Industrial Court since it is a case of termination simpliciter item No. 9 is not attracted and Item No. 1 is attracted of Schedule IV. Since the accused *i.e.* original respondents had started depositing the amount since June 2009 i.e. the amount was deposited in the Industrial Court. However, as the complaint came to be dismissed, the original Complainant wanted to go in writ petition to challenge the Judgment and order which was passed by me. This Court therefore in order to facilitate the complainant to challenge the order of dismissal before Hon'ble High Court directed original respondents not to ask for withdrawal of the amount which they had already deposited as per order below Exh. U-2 and further asked them to go on depositing monthly wages every month for a period of six months till then complainant can go in writ petition against the order of dismissal of this complaint.

4. There is nothing on record to show that as to what had happened thereafter, whether the complainant had preferred writ petition and has obtained any stay in the said writ petition is preferred so.

5. Proceedings under section 48 (*1*) of the MRTU and PULP Act, 1971 which were initiated by the complainant for non compliance of the order below Exh. U-2 were going on. The accused preferred application Exh. C-4 for the dismissal of the Criminal Complaint and the same application Exh. C-4 came to be dismissed by the Learned Labour Court. I heard Learned Advocate Shri Acharekar for the accused (employer) and Learned Advocate Shri Sunil Patil for the complainant. Shri Patil submitted that complainant has not preferred writ petition against the order of dismissal of the complaint (ULP) No. 124 of 2008 as yet since June 2011.

6. Learned Advocate Shri Acharekar submitted that the Learned Lower Court has erred in not dismissing the Criminal case when the same had become infructuous when the complaint (ULP) No. 124 of 2008 has been dismissed by this Court giving right to the original respondents to claim back the wages which they had deposited in the Court. The order below Exh. U-2 has been merged into the final order of dismissal of the complaint and therefore, complaint does not survive. Learned Advocate Shri Acharekar relied upon reported decision in *2001 III CLR 28 in case of Mohammad M. Alam V/s. Western India Automobile Association, Mumbai and Anr.,* and on the point of maintainablity of the criminal case decision in *1998 II CLR page 1188, between Madhav Ramkrishna Chitnis and Ors. V/s. State of Maharashtra and Ors.* After having considered the arguements Advanced by the Learned Advocate Shri Acharekar for the accused-applicants and Learned Advocate Shri Sunil Patil for the complainant, following points aise for my consideration and I

record my findings against them for the reasons stated below :—

Points	*Findings*
(*1*) Whether the Lower Court has erred in rejecting the application Exh. C-4 ?	In the affirmative.
(*2*) Whether the order of the Learned Labour Court requires interference ?	In the affirmative.
(*3*) What order ?	Revision is allowed. Complaint stands dismissed.

Reasons

7. *Point Nos. 1 and 2*.— Before I deal with the revision and the merits of the revision, it is necessary to note down admitted facts :—

(*1*) That though belatedly the accused persons had started depositing the amount as per the order passed below Exh. U-2 and even deposited the arrears of wages which were accrued and which were payable to the complainant.

(*2*) The order was passed in the month of July 2008 and the compliance had started in the month of July 2009.

(*3*) The original complainant thereafter was heard by his Court and complaint (ULP) No. 124 of 2008 was dismissed for want for jurisdiction and this Court has granted liberty to the complainant to go before the Labour Court to challenge the termination and also his prayer for going in writ petition against the order of dismissal of the complaint (ULP) No. 124 of 2008 was considered and this Court directed the original respondent *i.e.* employer to go on depositing monthly wages for further period of six months or till the complainant files writ petition which ever is earlier.

(*4*) The writ petition is still not filed as was submitted by the complainant that he was to file writ petition on the day on which the complaint was dismissed. He has also not preferred any proceeding before the Labour Court challenging his termination.

Therefore, in the light of these facts and admitted position as it stand the application Exh. C-4 will have to be considered.

8. The first and foremost question which arises for my consideration is, whether the revision was maintainable against the order of rejection of Exh. C-4 which is for the relief of dismissing the complaint itself ? I have considered reported decision which the Learned Advocate Shri Acharekar had relied upon. In *2001 II CLR 28 in Mohamad M. Alam V/s. Western India Automobile Association, Mumbai and Anr*. In this matter, it appears that petitioner-original complainant had filed complaint u/s. 48 of the Act to Labour Court against respondent for breach or rather non-compliance of order of Industrial Court and Labour Court issued process and against the said order respondent filed revision under section 44. Industrial Court allowed the revision and set aside order of Labour Court issuing process. Matter went in writ petition to Hon'ble High Court and Hon'ble High Court upheld the order of Industrial Court and dismissed the complaint preferred by the complainant. This clearly established that the revision is maintainable against the order of issuance of process u/s. 48 of the MRTU and PULP Act, 1971. The same analogy would apply when the application came to be placed for dismissal of the complaint. Learned Advocate Shri Acharekar further submitted that the persons who are named in the complaint are not the one who are made party in the criminal complaint U/s. 48 of the MRTU and PULP Act, 1971 and for that he had relied upon another decision reported in *1998 II CLR page 1188, between Madhav Ramkrishna Chitnis and Ors*. V/s. *State of Maharashtra and Ors*. It appeard that Sr. Vice President Dhutia was already party to the complaint Shri H. M. Pharande, General Manager (Personnel)

was also a party to the complaint and Shri S. C. Singh, General Manager (Security) too was the party to the complaint. They are the ones who are made accused in the complaint u/s. 48 of the MRTU and PULP Act, 1971 and therefore, when the revision is preferred for only these 3 people the decision which has been relied upon by Learned Advocate Shri Acharekar has no applicability. Now coming to the reasoning given by the Learned Labour Judge in dismissing the application. In para 3 of the said order, the Learned Labour Judge has observed that respondents have deposited Rs. 1,11,081 as arrears towards the monthly wages for the period 19th March 2008 to 30th June 2009 and thereafter they also deposited the amount of Rs. 7, 204 towards monthly salary of August, 2009, on 11th September 2009, but thereafter there is nothing on record that they have regularly deposited the monthly wages in the court. Proceeding under section 48(*1*) were initiated in the month of March 2009. He observes that though the order was passed in the month of July 2008, a year thereafter the arrears of wages were deposited and regular depositing of the amount every month had started. Ostensibly as one looks at these bare facts, it would clearly attract section 48 of the Act for non compliance of the order of the Industrial Court below Exh. U-2. The Learned Labour Judge has however turned nelson's eye towards the subsequent development *i.e.* complaint (ULP) No. 124 of 2008 itself came to be dismissed on the point of jurisdication, and therefore, this has resulted, in my opinion, in to miscarrige of justice. Had he considered that complaint would have been dismissed, it would have entailed the accused persons to claim back wages and stop depositing the monthly wages as per this order of the Court while complaint was dismissed, the accused went on depositing monthly salary every month for the period of six months in order to enable the complainant to approach the Hon'ble High Court or to approach the Learned Labour Judge preferring the complaint against his termination simpliciter or dismissal simpliciter for that matter. The Learned Labour Judge has failed to appreciate this fact that the complainant has neither preferred any proceeding before the Labour Court nor he has gone in writ petition which intention he has disclosed when the complaint (ULP) No. 124 of 2008 was dismissed. Had he considered all these facts and the infirmities in the complainant's case certainly he would have allowed the application Exh. C-4 by dismissing the complaint as the cause does not survive at the particular time when the application Exh. C-4 was preferred. Even there is no writ petition challenging the order of dismissal of the complaint (ULP) No. 124 of 2008 nor the complainant has challenged the order of termination simpliciter before the Labour Court, and therefore, I answer Point No. 1 in the Affirmative and point No. 2 in the affirmative that the impugned order deserves to be interfered with by allowing the revision. In the result, the revision will have to be allowed as under.

Order

(1) Revision application is allowed as under:—

(*i*) Application Exh. C-4 is allowed.

(*ii*) Misc. Criminal Complaint (ULP) No. 51 of 2009 filed against the accused-Revision Petitioner by the original complainant stands dismissed.

(2) No order as to costs.

(3) Record and Proceeding be sent back immediately.

A. R. MAHAJAN,
Member,
Industrial Court, Maharashtra.

Mumbai,
dated the 9th January 2012.

(Sd/-)
I/c. Registrar,
Industrial Court, Maharashtra
Mumbai.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI S. K. SHALGAONKAR, MEMBER

REVISION APPLICATION (ULP) No. 8 OF 2009 IN COMPLAINT (ULP) No. 197 of 2004.— Mr. L. N. Pandey, Mata Parvati Nagar, Dr. B. I. Road, Walkeshwar, Banganga, Mumbai 400 006—*Applicant* (Original Complainant)—*Versus*— (1) M/s. Gujarat Pipavav Port Ltd., Pipavav House, 209, Bank Street Cross Lane, Opp. Shahid Bhagat Singh Road, Fort, Mumbai 400 023. (2) Hennric Christan--C. E. O. Pipavav House, 209, Bank Street Cross Lane, Opp. Shahid Bhagat Singh Road, Fort, Mumbai 400 023 functioning at : Empire Industry Complex, Senapati Bapat Marg, 1st Floor, Saf Marine Building, Lower Parel (W.), Mumbai. (3) The Presiding Officer, Seventh Labour Court, Bandra, Mumbai—*Opponents* (Original Respondents).

CORAM.— Shri S. K. Shalgaonkar, Member.

Appearances.— Shri F. R. Mishra, Advocate for the applicant.

Shri Karl F. Tamboly, Advocate for the Opponent No. 1.

Shri Arshad Shaikh, Advocate for the Opponent No. 2.

Judgment

(Delivered and dictated in open court on 28th February 2012)

1. Through this Revision Application (ULP) No. 8 of 2009 below Exh. U-1 the applicant (Original Complainant) as against the opponent Nos. 1, 2 and 3 (Original Respondents No. 1 and 2) has moved this revision u/s. 44 of the MRTU and PULP Act, 1971; by filing with the office of the Court on 13th January 2009 thereby impugning the very Judgment and order passed by the Learned Presiding Officer of the 7th Labour Court, Mumbai in the Original Complaint (ULP) No. 197 of 2004, dated 12th November 2008; in this revision petition; as named specifically in the caption below Exh. U-1, respectively thereof.

2. That, the contentions of the applicant so pleaded therein that could be taken down in brief as under :—

(*a*) That he was appointed in the employment with Respondent Company w.e.f. 14th May 1997 and subsequently awarded the grade as a ' Senior Office Attendant ' and thereafter as a 'Junior Assistant', in Grade 7-A and 6-B respectively ; though initially no appointment letter was issued to him.

(*b*) Though he was issued with the promotion and special increment order *vide* letter dated 14th July 2000 by the Respondent Company thereby he was given increments for the years 2002 and 2003 respectively.

(*c*) He had worked more than his regular duty hours in the month of March 2004, and was entitled to get overtime for the said period. But never paid earned wages as well as overtime wages due in the first week of April 2004.

(*d*) He was called on by the respondent in the month of April 2004 and informed that he too accept transfer to another company however, as his future in the said sister company was not certain, he refused to accept the same offer of transfer.

(*e*) That on 12th April 2004, the Complainant alongwith seven other colleagues addressed a letter dated Nil to the Respondents demanding payment of his salary for the month of March 2004, but the Respondant neither replied nor paid the same.

(*f*) They were threatened on the count that they did not accept transfer hence their services would be terminated but they were made to sit idle during the month of April 2004.

(*g*) Hence, the complainant in apprehension of termination of his services; approached the respective Labour Court through the complaint wherein by way of *ad-interim* order dated 30th April 2004 directing the Respondents to maintain *status quo* till the next date was passed.

However, during the pendency of the said complaint, the Respondents have retrenched him from services; it is by way of unfair labour practice on the part of the Respondent as against him for which he got amendment to the main complaint and sought relief additional on that count.

(*h*) The Respondents through their ' Written Statement ' opposed the same complaint and after hearing both sides the Learned judge of the respective Labour Court in the said Complaint (ULP) No. 197/2004 passed order on 12th November 2008 (Annexure-A) thereby dismissed the said complaint.

(*I*) being aggrieved this is the revision application filed by him with a request that the impugned order dated 12th January 2008 be quashed and set aside on the following grounds :—

(*i*) That the very Judgment and order dated 12th November 2008 so impugned in this revision is illegal, bad in law and not sustainable on facts and in law.

(*ii*) That the Learned Judge has ignored the basic concept of justice with special regard to section 25-N of Industrial Disputes Act, 1947 with rule 81 of the Industrial Disputes Bombay Rules framed thereunder.

(*iii*) That order also suffers from technical interpretation of the term 'factory' as per section 2 (m) of the Factories Act, 1948 and wrongly interpreted and held that the Respondent establishment and its activites do not fall it as a factory, therefore, chapter 5-B of the Industrial Dispute Act do not exist in that case as held therein.

(*iv*) The Learned Judge wrongly came to the conclusion that chapter 5-B was not applicable to the Respondent No. 1 undertaking and hence premission of the appropriate Government to the effect of retrenchment was not required. As against the same though the respondent is employing sufficient number of employees to attract chapter 5-B and make it coverable as per section 2 (m) of the Factories Act, 1948.

(*v*) That the Learned Judge's observation are perverse and not based upon oral as well as documentary evidence on record and hence, conclusions drawn by the Learned Judge are wrong.

(*vi*) The final conclusion drawn by the Learned Judge whereby holding that the procedure so adopted was proper and for adequate reasons and the conclusion to the effect of surplus driver the Complainant became is baseless one.

(*vii*) The Learned Judge has committed gross error of law in respect of seniority list before effecting the said retrenchment as it was not in accordance with rule 81 of the Industrial Disputes Bombay Rules.

(*viii*) Again Learned Judge has committed gross error of law and fact in the back ground that there has been rationalization effected by it with regard to grade or category of employees including the Complainant ; irrespective of the fact that the Complainant was put in the category of Junior Assistant Grade 6-B.

(*ix*) The very action of the Respondents terminating the services of the Complainant under the guise of alleged retrenchment as driver it is nothing but unfair labour practice but the Learned Judge has failed to appreciate this fact.

(*x*) That the Learned Judge wrongly came to the conclusion that designation of driver/senior driver, though designation was not important aspect but the category of employees for whom retrenchment was sought since it was the incidental work of driving the vehicle assigned to the Complainant but his predominant duties were of office work as a Junior Assistant grade 6-B.

(*xi*) The Learned Judge has erred grossly while interpreting the legal provision as per section 25(N) of the Industrial Disputes Act, since the provisions of law need not be pleaded.

(*xii*) Again the Learned Judge committed a gross error of law while accepting that the so called reternchment compensation as a proper and permissible under the law.

(*xiii*) For the aforesaid reasons it is lastly prayed that by allowing this revision application; the very order dated 12th November 2008 by way of Judgment so passed in the original Complaint (ULP) No. 197 of 2004 be quashed and set aside. The Respondents be directed to reinstate the Complainant in his original post with full back wages and continuity of service *w.e.f.* 14th June 2004.

3. The certified true copy of the said Judgment and order dated 12th November 2008 so passed in the original Complaint (ULP) No. 197 of 2004 and impugned in this revision got filed by the applicant on record.

4. Though it appears that there has been appearance from the side of the opponent No. 1 and 2 (Ori. Respondent company) through its Learned Advocate on record below Exh. C-3 dated 17th December 2011 along with the authority letter (True Copy) thereof of the resolution so passed by the Respondent Company dated 28th January 2010 respectively but till the date it has not put on record except Exh. C-3 anything on behalf of the Respondents.

5. Accordingly, only on the basis of contentions of the applicant below Exh. U-1 in this revision petition; the following two issues are being framed by this Court and the same are being answered through its findings of course supported with reasons thereof as under :—

Issues :—

(1) Does applicant prove that his Revision Application (ULP) No. 8/2009 below Exh. U-1 filed u/s 44 of the Act, 1971 is deserved to be allowed ?

(2) What is the final order ?

Findings :—

(1) No.

(2) As per the final order; so passed today in the second session.

Reasons

6. Heard the Learned Advocate Shri F. R. Mishra for the applicant and Learned Advocate Shri Tamboly Karan F. on behalf of the Respondent No. 1 and 2 company on 27th February 2012, respectively, at length.

7. *Issue No.*–1.—In this respect it is the oral submission of the Learned Advocate for the applicant in this revision petition (Ori. Complainant workman) that there was initially apprehension of his termination at the hands of the Respondent Company. He approched the Hon'ble 7th Labour Court, Mumbai by filing Complaint (ULP) No. 197 of 2004; wherein the Learned Judge has protected his interest by passing *ad interim* order on 30th April 2004 respectively. However, he has submitted further before the Court that as during the pendency of the said complaint the Respondents have retreched the original complainant from the services *vide* order dated 14th June 2004. Hence, he was required to carry out the amendment below Exh. U-1 and also insert additional prayer *vide* para 9-A therein. In the R and P he has tried to point out below Exh. C-6 there is a written statement filed on behalf of the original Respondent Company.

8. However, it is his oral submission by pointing out to this Court that the witness for the Respondent Company below Exh. C-10 on running page 41 of the R and P the said witness has admitted that there were more then 400 workman on the date of impugned retrencehment so carried out by the Respondent Company during pendency of the litigation only ; but without complying with the provisions of the Industrial Disputes Act, 1947 and Industrial Disputes Bombay Rules, 1957 to that effect.

9. Then, the Learned Advocate for the applicant/workman in his revision petition has taken this Court through the impugned Judgment and order of the Learned Judge of the respective Labour Court, Mumbai dated 12th November 2008 particularly *vide* para 9 to 11 wherein three aspects were required to be considered and appreciated by the Learned Judge namely :—

(*a*) Non compliance of rule 81 of Industrial Disputes Bombay Rules, *i.e.* Publication and exhibition of the seniority list of the employees of that category to which the Complainant was beloning to ; got not done by the Respondent Company prior to issuance of the notice of retrenchment so impugned in that respective complaint ULP matter.

(*b*) Secondly, there was inadequate amount of retrenchment compensation/less amount of retrenchment compension as his last drawn wages were Rs. 7,500 but though it was protested by way of his reply, it was not immediately acted upon on behalf of the management of the Respondent and.

(*c*) Thirdly, as there was no prior permission of the Appropriate Government so taken by the management within the meaning of section 25(*m*) of the Industrial Disputes Act, 1947, hence all these aforesaid grounds the Learned Judge has failed to appreciate on these aspect and also interpreted wrongly the provisions of law and did not consider the case law on which the applicant (Original complainant) has relied upon in the said matter accordingly.

10. On the other hand, it is oral submission of the Learned Advocate for the opponets, that this Court is requestd to bear in mind that the powers of the Industrial Court within the meaning of section 44 of the Act, 1971 are equivalent to that of Article 227 of the Constitution vested with the Hon'ble High Court and it is very limited one. It cannot reappreciate the evidence on record, nor can substitute the view taken by the Learned Judge of the Trial Court to that of the Industrial Court. Unless fairly he has acceded with his oral submission, that when there was patent error of fact and law in the very impugned Judgment and order then only Learned Judge of the Industrial Court can allow such type of revision and not otherwise.

11. It is his second limb of oral submission, that the very revision application below Exh. U-1 is not at all maintainable on the very ground that the Complianant in his oral evidence below Exh. U-12 particularly in his cross-examination has admitted that there was increment given to him and he was fixed in another category with re-desiganted as a 'senior driver' with a facility to avail overtime allowance for the excess work done by him as a driver with the Respondent director concerned on his vehicle. He has not objected to the seniority list so published on the notice board and copy of the same was also given to Appropriate Government office that is on record.

12. Similary, it is oral submission further of course on behalf of the oppenents that as there was no pleading in respect of alleged inadequate retrenchment compensation amount in the main complaint below Exh. U-1. In the main matter before the respective Labour Court, so also the Complainant has not positively pleaded nor proved as to how much amount specifically he was to receive and get paid towards retrenchment compensation, the complainant has failed to work out the same amount nor proved. Though, there was reply from the side of the Complainant (Ori.Workman) through his letter dated 1st July 2004 with regard to retrenchment notice which did not set out as to how the said amount of retrenchment compensation was short or inadequeate. To that effect, the Learned Advocate for the opponents had taken this Court through para Nos. 12 to 14 as well as 17 of the said impugned Judgment in this revision petition and submitted before the Court that the view so possible so taken by the Learned Judge of the respective Labour Court of course which is fully based upon the oral as well as documentary evidence is not required to be replaced by the Industrial Court in the revision filed u/s. 44 of the Act, 1971.

13. Thereafter, the Learned Advocate for the opponents has taken this Court through running page Nos. 99 and 145 with regard to Exh. C-10 wherein affidavit in testimony of the Respondent's witness to the effect of compliance of rule 81 got done by the management; and there is no cross from the side of the Complainant on record.

14. When with regard to section 25(*N*) of the Industrial Disputes Act, 1947, particularly the retrenchment notice on running page No 137 of the record and proceeding dated 14th July 2004 is the self explanetory; along with the reasons for the said retrenchment. On this count, even the Respondences witness below Exh. C-10 has admitted in his cross that there was strengh of 400 employees working in the Respondent Company at the relevant time has not automatically held the original Complainant that there was manufacturing process so carried out in the alleged industrial establishment of the respondent nor it done fulfill the definition clause of factory as per section 2(*m*) of the Factories Act, 1948 at all. Hence,there was no necessary for the Respondent Company to comply with section 25(*N*) of the Industrial Disputes Act, 1947 namely on the ground that section 25(*1*) of the Industrial Disputes Act, 1947 and its requirement thereof were not fulfilled on behalf of the Complainant in the original case on record. Hence, as it has not been pleaded not proved through evidence as to how section 25(*1*) of Industrial Disputes Act, 1947 was attracted and consequently section 25(*1*) of the Industrial Disputes Act, 1947, was obligatory on part of the Respondent to fulfill the same. In this respect the Learned Advocate Shri Tamboly for the Respondents has referred to and relied upon series of case laws to the compliation below Exh. C-4. They are two in number, but the case laws on which the opponents company has relied upon through their Learned Advocate on record are in relation to powers of the Industrial Court with in the meaning of section 44 of the Act, 1971 are of only supervisory/superintendence in nature; hence limited one. They are as under :—

(*1*) *2000(1) Bom. C. R. 555, in case of the Ammunition Factory Co-Operative Credit Society Ltd.,* V/s. *Balasaheb Ramchandra Ghule and another.*

(*2*) *2000 (86) FLR 813, in case of Maharashtra State Road Transport Corporation V/s. Kantrao s/o Gyanbarao Dabhale.*

15. And lastly, he has submitted before the Court that both on facts and in the eyes of law, as there has been no error committed by the Learned Judge of the 7th Labour Court, Mumbai while passing the Judgment and order in the original Complaint (ULP) No. 197 of 2004 dated 12 November 2008; this Industrial Court may not be able to interfere therein within the limited jurisdiction as per its powers vested u/s. 44 of the Act, 1971, as there has been no apparent or patent error on the very face of the said Judgment and order, so impugned in this matter at all. By way of reply of course on law point, the Learned Advocate for the applicant workman has submitted before the Court; that when the witness for the Respondents has openly admitted in his cross, that the strength of its employees were around 400 *i.e.* more than 100; but no prior permission for retrenchment was taken by the management to that effect in advance. Therefore the very retrenchment is required to be treated as void *ab-intio* illegal ; for want of permission of the Appropriate Government on that count. And it is a law point and there is no necessity for the original complainant to plead and prove but it could be best argued and that has been done by relying upon the same case-laws ; he did it in the original Complaint (ULP) No. 197 of 2004 accordingly.

16. Admittedly the powers of the Industrial Court with regard to section 44 of the MRTU and PULP Act, 1971; as per the catena of case-laws. Particularly of our Hon'ble Bombay High Court are limited one. And similarly, it is having a narrow ambit of its jurisdiction of supervisory and superintendence in nature over the Lower Court *i.e.* the Labour Court analogous to that of as per powers of Hon'ble High Court under the Article 227 of the constitution of India.

17. Particularly in the light of the law so laid down by our Hon'ble Bombay High Court in 2000 (1) Bombay CR 555 as well as 2001 (III) LLJ. 993 Bombay respectively is in relation to the powers of Industrial Court within the meaning of section 44 of the Act, 1971 are vested with the limited jurisdiction particularly to the extent of the Industrial Court has to find out as to whether the findings given by the Learned Judge of the concerned Labour Court are apparently patent error either of fact or law or mixed one on the very face of the said Judgment/Order which is under challenge before the Industrial Court in the form of revision petition filed u/s. 44 of the Act, 1971.

18. In the premise, it does not prevent this Court to go through the oral as well as documentary evidence ; in order to ascertain as to whether the Learned Judge of the Lower Court has committed any error of law or mixed error of fact and law, while giving his findings on the basis of the material on record, comprising of both oral as well as documentary evidence in the matter before me or not Infurtherence thereof, by taking a cursory glance to the effect of the R and P of the original Complaint (ULP) No. 197 of 2004 before the 7th Labour Court, Mumbai ; along with the Judgment and order so passed finally on merits *vide* order dated 12th November 2008. It is evidence that admittedly ; in respect of apprehension of termination of the services of the Complainant-workman named there in ; he approached the respective Labour Court in Complaint (ULP) No. 197 of 2004; irrespective of a status duo order during pendency of the litigation the management of the Respondent No. 1 with the Respondent No. 2 has terminated with the services of the present Complainant by issuance of retrenchment notice dated 14th June 2004. Later on it seems, that as there was retrenchment the Complaint sought to be amended on the basis of the contentions so taken in the ' written statement ' below Exh. C-6 so filed on behalf of the original Respondents on record on 22nd February 2007. However, it is also the admitted fact that no consequential amendment to its 'written statement' got filed by the Respondents later on in the said Complaint ULP matter.

19. It is also admitted-fact that in order to prove the unfair labour practice at the hands of Respondent No. 1 and 2 the Complainant who in his affidavit in testimony in lieu of examination in chief below Exh. U-12 has filed dated 7th October 2007 and along with it ; admittedly on running page 81 of the said R and P the Complainant has also filed a promotion letter dated 14th July 2000 as a 'Junior Assistant' in Grade 6-B *w.e.f.* 1st April 2000. On running page 83, it is undisputed, that the Complainant himself ; along with his other-co-workman/employees have issued a letter under the title as ' Annexure-C ' ' Chaffeurs of GRPL ' requesting for payment of salary for the month of March, 2004, sought by them from the management and it has been duly endorsed to with the seal and signature of the Respondent-Company dated 12th April 2004 and this Complainant has in his cross admitted the contents *vide* 'annexure-C' dated 12th April 2004, running page No. 89 is the xerox copy of the cheque to the tune of Rs. 47,739 paid to the Complainant bank account Number so mentioned therein dated 14th June 2004. It is also not disputed, that *vide* ' annexure-E ' on running page 93 dated 1st July 2004 the Complainant has addressed a letter in response to the letter of retrenchment dated 14th June 2004 he received and with an objection he raised of course touching to the law point in respect of breach of sections 25-F 25-H of the Industrial Disputes Act, 1947 and requesting the company to allow him to resume his work with continuity of service as he lasted therein along with postel registration he attached therewith.

20. It is also not disputed on behalf of the Respondent Company one Shri Mukesh K. Naresh, through his affidavit testimony got examined through his affidavit and he got cross examined, who has in his cross admittedly below Exh. C-10 on running page 41 *vide* para 16 has admitted on oath before the Said-Court, that approximately there were 400 employees employed at seaport, along with 22 employees, including managerial-staff. And *vide* para 18 it has been tried to be

pointed out, that this witness has admitted that duties of 'office-attendant' and 'driver' are entirely different However, it has been brought to the notice of this Court, at this juncture, that there was no protest; nor challenge to the re-designation of the Complainant by putting him as a ' senior driver categery employees' at the time when the seniority list was prepared and exhibited on notice board. A copy of which was displayed and given to the office of the Appropriate Government *i.e.* Labour Commissioner in format so prescribed (running page 133) as a compliance as per rule 81 of the Industrial Disputes (Bombay) Rules, 1950 giving the names of 3 drives; including the name of this Complainant Shri L. N. Pandey, Senior Driver and that has been duly acknowledged by the office of the Appropriate Government and Labour Commissioner, Mumbai with its seal and signature thereof. Hence, at this juncture; it cannot be said that there was breach of rule 81 of Industrial Disputes Bombay Rules at the hands of the original-Respondent-Company in the said matter, has taken place.

21. In the impugned order of retrenchment notice dated 14th June 2004 (running page 125 of R. and P signed by the company's *vice* president and head of HR--administration)with the endorsement by two witness that the Complainant Shri Pandey has refused to accept the notice and settlement cheque dated 14th June 2004 with the reason as mentioned therein, with regard to why the company was required to retrench these workman; including the Complainant and by complying with the provision of section 25-F of Industrial Disputes Act, 1947 along with the details in respect of full and final settlement as on 14th June 2004 (running page 125 and 127). It all does also show, that including the arrears of salary for the month of April and May, 2004, as well as salary up to 14th June 2004; the amount of retrenchment compensation right from March, 1997 upto 14th June 2004 ; along with leave encashment of 42 days; by deducting an amount towards Provident Fund, ESIS; net amount of Rs. 47,739 was paid through cheque on running page 129 to the Complainant is the matter of record. Annexure-D on runing page 149 is the seniority-list of drivers of the company as on 31st March 2004; including the name of the Complainant at Sr. No. 6, covering in all 8 drivers out of them 6 ' senior drivers' and two designated as ' drivers ' only; along with their length of service as mentioned therein. The notice of retrenchment (running page No. 137) the Court has gone through.

22. The yearly increment the Complainant was receiving by way of 23rd July 2003 letter (157 runing page) all these have been duly covered and reflected in the Judgment of the Hon'ble 7th Labour Court, Mumbai while delivering the Judgment and passing final order on merits in the original Complaint (ULP) No. 197 of 2004 dated 12th November 2008; respectively.

23. By taking a cursory glance of this Judgment so impugned and order so under-challenge in this Revision petition below Exh. U-1, it appears therefrom that the Learned Judge has framed in all 4 issues *vide* para 5 on running page 7, in the said Judgment and given findings respectively to each of the issues. It is worth to see, that the Learned Judge has taken cognizance of the material on record and appreciated on the basis of both oral as well as documentary evidence; scrutinized the same and after analyzing the same ; In consonance with the mandatory conditions of retrenchment as contemplated u/s. 25-F of the Industrial Disputes Act, 1947; particularly by quoting it *vide* para 9 on page 10; she has succinctly appreciated each and every aspect in respect of the payment of retrenchment compensation as per section '25-F' of Industrial Disputes Act, 1947. It is preceded already with the compliance of rule 81 of the Industrial Disputes (Bombay) Rules, 1950 which is supplementary to the main provisions of the Industrial Disputes Act, 1947; with regard to valid and effective order of retrenchment, along with the reason why it was necessitated for the management to do so; keeping in view the cardinal principal of retrenchment " last come first go " that has been also scrupulously followed. It has been rightly reflected in the Judgment ; as well as the findings with regard to issue No. 1 and 2, the Learned Judge has given a reasoned-findings right from para No. 10 onward upto para No. 13. It seems further, that as per the increment slip and redesignation of the Complainant as a " senior driver " in the category of drivers which remained to have been challenged all these not allow the Learned Judge to label it as a violation of section 25-' F ' of the Industrial Disputes Act, 1947.

24. However, it is further seen, that the concerned Complainant (Ori. workman) was in receipt of overtime allowance, for the excess work, he was discharging as a 'driver' essentially was paid for by the management from time to time and that could have been reflected with the log- book entries below Exh. C-10-A. This has also been accepted with his redesignation as ' senior driver ' with letter dated 23rd July 2003. It is the clinching point, the judicial cognizance of the same has rightly been taken down by the Learned Judge, in respect of the entries of the log-book, which are essentially maintained for the post of ' driver ' along with his redesignation and the salary drawn per month with the terms and conditions of his service; though no notice of change u/s.9-' A' of Industrial Disputes Act, 1947 was issued by the management. However, since it has been not adversely affected as mentioned therein *vide* para 15 on page 13 of the said Judgment/ finding with regard to issue No. 1 and 2. The vital aspect the Ld. Judge has also considered touching to the effect of as to how, the calculation of retrenchment compensation allegedly in short of the legal retrenchment compensation and or inadequate-retrenchment-compensation; the Complainant has alleged to have been paid by the management, in his favour. On this count, the Learned Judge has considered this point in issue sufficiently and effectively by taking down all dimensions to that effect in relation to last drawn wages of the Complainant, at the relevant time the aspect of payment of over time allowance as a 'driver'. So, also ; nothing was pleaded ; nor proved by the Complainant in the main complaint as well as positively as per his calculation the said retrenchment-compensation amount as to how it fell short/inadequate; he has not made out any case on that count. Hence, the Learned Judge has given her findings to that effect *vide* para 17 and 18 thereof.

25. The Learned Judge, has also considered, at length, this aspect by taking into consideration the law laid down by Hon'ble Supreme Court in *(AIR) 1960 SC 251* and its interpretation with regard to calculation of the retrenchment compensation amount has neither been pleaded, nor it has been proved positively and effectively from the side of the complainant ; has been sufficiently given due consideration by the Learned Judge both on facts and in the eyes of law right from para No. 19 onwards to para No. 21 on running page No. 16 and 17 at length.

26. With regard to compliance of section 25(N) *i.e.* in terms of condition precedent to retrenchment workman as per chapter IV B as per Industrial Disputes Act, 1947, However, section 25(L) of the Industrial Disputes Act, 1947; preceded with the definition of ' Industrial Establishment ' as per 25-L (a) as mentioned and defined as a factory u/s.2 (n) of the Factories Act, 1948. And for that purpose, the word " manufacturing-process " so defined u/s. 2(k) of the Factories Act, 1948 (i and ii) of the Factories Act, the word and definition clause of 'factory' got explained as to how whether there was any manufacturing-process was carried out by employing more than 100 employees; if proved then, only provision of section 25(N) of the Industial Dispute Act,1947 would come into play. Basically and admittedly as per the very admission so given by the single-solitary witness below Exh. C-10 as narrated above ; that there were 400 employees. But on this count, the Complainant has neither pleaded in main complaint Exh. U-1; nor through amendment also; as to whether there was any manufacturing process carried out with the help of 'power' with the requisite number of employees involved therein; either as industrial establishment and/ or 'factory' as per the provisions of Factories Act, 1948 which would comply in *toto* to the condition precedent within the meaning of section 25 (L) of the Industrial Disputes Act, 1947; the answer to this clinching issue on the side of the Complainant should be ' nil '. As the Learned Judge has rightly held to that effect the Complainant has not pleaded, nor proved to that effect precisely; as no manufacturing process was carried out in the establishment which could be titled as factory u/s 2 (m) of the Factories Act, as and or as a Industrial Establishment as per section 25(L) of the Industrial Dispute Act. Nothing of that sort ; even by taking recoures to the landmark-Judgment

of Hon'ble Supreme Court [Supra 2007 (113) FLR SC] has been interpreted on that count by the Learned Judge; keeping in view as the admitted fact that the Respondent Company have been handing sea-going and coming vessels with the facility of import and export at the seaport, does not involve a manufacturing-process or 'factory' as such under the provisions of Factories Act, 1948 or Industrial Disputes Act, 1947; particularly as per section 25(K) of the Industrial Disputes Act, 1947 at all since not proved and that has been throughly discussed, analysed and taken due indulgence. It seems apparent on the very face of the Judgment by the Learned Judge throughly in furtherance thereof *vide* para 26 and 27 on running page 20 and 21 ; of the said Judgment and order which is under challenge in this revision-petition. This has been further discussed and explained to in her reasoned findings *vide* para 27 on running page 20, 21 as well as 22 respectively. This court does not find, at this juncture ; any sum substance in the oral submission of the Learned Advocate for the applicant (Original-complainant-workman) ; in the sense, that though there was approximately 400 employees in the employment with in Respondent-Company so found at the material time as per the admission given by the Respondent's single witness in Exh.C-10. It does not entail any substantial or conoborative case in favour of the Complainant, of course for the want of any pleading to that effect or later on by way of amendment at the hands of the Complainant. Hence, the Complainant has failed on that count; accordingly; as per the findings given by the Learned Labour Judge through her Judgment and order dated 12th November 2008; so under challenge in this revision petition.

27 Keeping in view, of coures, the restricted and limited Jurisdiction, with narrow ambit of powers within the meaning of section 44 of MRTU and PULP Act, 1971; this court at this juncture ; does not find any lacuna, defect, drawback, patently; as that could be titled as 'perverse-finding' of the Learned Judge 7th Labour Court Mumbai in her Judgment and order dated 12th November 2008; on the very face of the same.

28 Therefore, the interference so contemplated at the hands of the Industrial Court therein within the meaning of section 44 of the MRTU and PULP Act, 1971; cannot be said to be warranted at this juncture. Since on the plethora of no patent error of fact and law or mixed fact or law has been found by this court in the said Judgment and order at all.

29 On the other hand ; it is also seen and taken cognizance of by this Court; that the present applicant has acted upon, by accepting the retrenchment-compensation so paid to him ; but through his 'reply' immediately ; but for want of affimative, positive and effective-calculation of retrenchment compensation according to him has not been brought on record by way of pleading ; nor by way of conoborative evidence from his side in the main matter before the respective Labour Court. Therefore, the ultimate-result was nothing but the findings of the Labour Court as a fact finding Court-now cannot be assailed by Industrial Court, within the meaning of section 44 of the Act, 1971. As it is merely revisional/superintendence power possess over the respective Labour Courts, but cannot enlarge the scope of the said section 44 of the Act, 1971. And this Court is not expected to sit in judgement, as to that of Appellate Court, as a law so laid down by Hon'ble Bombay High Court in the catena of Judgment some of the referred to on behalf of the opponent, through its compilation below Exh. C-4 during the course of arguments before this Court yesterday only on 27th February 2012. Admittedly that has not been countenanced nor contradicted with any oral submission, along with the supporting case-laws from the side of the applicant on any grounds in respect of this Revision-petition below Exh. U-1 filed under section 44 of the Act, 1971.

30 For all these reasons so narrated as above it is held, that the applicant below Exh. U-1 has failed to prove that his revision petition below Exh. U-1 filed u/s. 44 of the Act, 1971 is deserved to be allowed. Hence, the issue No. 1 is required to be answered in the 'Negative'.

31 *Issue No. 2.*—It is settled principle of law, that unless and until the revision applicant; has made out a strong case as to how the Learned Judge of the respective Labour Court has committed error either of facts or in law or both mixed ; while giving his or the findings supported with no reasons or not considering the material on record in part or in full as the case may be, this Court u/s.44 of the Act, 1971 would not step into ; by causing interference and dubbing it as a 'perverse-findings' here in this matter, nothing to that effect has taken place.

32 At the most, this Court at this juncture ; finds it just and proper, that an option clause left open to meet out the alleged inadquate/less amount of retrenchment compensation so calculated at the hands of the Respondent Company as per the law laid down by our Hon'ble Bombay High Court in its land mark Judgment known as Trade Wings Ltd., however, neither party to the litigation of course through advocate has pin pointed and brought to the notice of this court in its exceptional case this court could have played role by giving the legal/proper and just retrenchment compensation in favour of the original Complainant workman. However, since that case has not been made out particularly from the side of the original workman now the applicant below Exh. U-1. Hence, no option is left with this Court, but to affirm and confirm the very Judgment and the final order so passed by the Learned Judge 7th labour Court in the Complaint (ULP) No. 197 of 2004 dated 12th November 2008 as a final conclusion in this Revision-petition this Court has arrived at. Thereby, the issue No. 2 stands answered of course in the negative precisely on the basis of the negative findings the Court has given to issue No. 1 in the foregoing paras of this Judgment. Thus the final order.

Order

(*1*) The Revision Application (ULP) No. 08 of 2009 below Exhibit U-1 filed u/s. 44 of the Act, 1971; stands dismissed of course, with no order as to costs.

(*2*) The very Judgment and order so passed in the original Complaint (ULP) No. 197 of 2004 by the Learned Judge 7th Labour Court, Mumbai; dated 12th November 2008 stands affirmed and confirmed.

(*3*) The R and P of the said Complaint (ULP) No. 197 of 2004 stands returned to the respective Court, forthwith.

S. K. SHALGAONKAR,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 28th February 2012.

(Sd.)
I/*c*. Registrar.
Industrial Court, Mumbai.
Dated 15th March 2012.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI S. K. SHALGAONKAR, MEMBER, INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

Revision Application (ULP) No. 115 of 2011 In Condonation of Delay Application (ULP) No.18 of 2011.—M/s. Adarsh Rent-A-Car Pvt. Ltd.—Kedia Apartments, 29/F, Doongershi Road, Malabar Hill, Mumbai 400 006.—*Applicant.—(Original respondents)*.—V/s. Lahu D. Vaghat, Govind Bathare Chawl, Baptista Wadi, Malpa Dongri No.3, Jijamata Marg, Andheri (East) Mumbai 400 093.—*Opponent.—(Original complainant).*

In the matter of application under section 44 of MRTU and PULP Act, 1971 and in the matter of judgement and order dated 18th June 2011 passed by the 8th Labour Court, Mumbai in the matter of Condonmation of Delay Application (ULP) No. 18/2011.

CORAM.— Shri S. K. Shalgaonkar, Member.

Appearances.— Shri S. S. Pathak, Advocate for Applicant
Shri R. H. Meher, Advocate for Opponent.

Judgment

(Dictated and delivered in open court on 27th February 2012)

The Ex. C-1 filed by the applicant (original respondents) as against the opponent (original complainant) as named in the caption thereof moved this Court by way of Revision Application (ULP) challenging the impugned order so passed in original Condonation of Delay Application (ULP) No.18/2011 dated 18th June 2011; by way of Revision Application (ULP), under section 44 of the Act, 1971 with the office of this Court on 1st July 2011 thereof respectively.

2. According to the applicant company, its Annexure A the certified true copy of the said order so passed below Ex. U-1, dated 18th June 2011 is under challenge on the following grounds as stated therein in brief as under :—

(*a)* That the very impugned order and judgement passed by the Learned Judge, 8th Labour Court, is contrary to the law, equity and good conscience, hence it be set aside and it be quashed.

(*b)* As it has been suffered from patent error of law as well as patent of jurisdiction.

(*c*) Thus the patent error of law and patent error of jurisdiction are apparnent on the face of the record; the Learned Judge has exceeded its jurisdiction on which is not permissable in law.

(d) By passing the impugned order; it has resulted in manifest injustice hardship and losses to the applicant company.

(e) It is not based on evidence on record *i.e.* material on record before the Learned Judge therein.

(*f*) That the impugned reflects non-application of mind.

(g) The reasonings and conclusion drawn by the Learned Judge are in consistent and Contrary to law.

(h) The Learned Judge of the respective Court has filed to follow the ruling of the High Court thereby resulting into blatant error in passing the impugned order.

(i) The Learned Judge has filed to appreciate that the opponent has not produced any documentry evidence nor adduced oral evidence; thereby has not disclosed any just and sufficient ground to condone the said delay.

(*j)* The Learned Judge has failed to appreciate that he had already filed Complaint (ULP) No. 205/10 against the applicant company seeking the same relief, whereby the applicant has raised these issued about employer-employee relationship which was withdrawn by the opponent when the *interim-relief* application made by the applicant was dismissed on merits.

(k) The Learned Court ought to have rejected to entertain complaint and ought to have condoned the delay.

(l) The Learned Judge has failed to appreciate that, the opponent was allowed to withdraw the complaint and the Learned Judge passed the order that the proceeding was closed.

(m) The Learned Judge has overlooked the fact that when the earlier complaint was withdrawn on 21st January 2011; there was no just and sufficient reason showing that it was not within the limitation.

(*n*) The Learned Judge has ignored that the purported action in respect of the earlier complainant with regard to the date of termination *i.e.* 4th August 2010; as against the present application for condonation of delay was filed on 18th May 2011 without giving any just and sufficient reasons for condoning the delay.

(o) Thereafter, the Learned judge has exceeded the jurisdiction by Condoning the delay when only two grounds were mentioned in the application.

(*p*) In respect of the Advocate for the opponent who has remained one and the same but the opponent has taken false ground thereby. The Learned Judge has misinterpreted the citation and the Learned Judge has failed to appreciate the dishonest approach of the opponent on flimsy ground which were not pleaded nor proved. The Learned Judge has erred is assuming that the applicant was unemployed for want of evidence on record.

(q) Therefore, it is lastly prayed that by allowing this revision application the very order dated 18th June 2011 condoning the delay while deciding Condonation of Delay Application (ULP)28/2011 be quashed and set aside and the complaint if any so filed by the opponent be dismissed. R and P be called and the original Complainant (ULP) so mentioned therein respectively.

3. It seems from the record that below Ex. C-2 there is an application from *interim-relief* which has been endrosed not pressed for but through final hearing of the main application as per the Learned Advocate for the applicant dated 17th January 2012 has done on it. It is supported with the applicant's affidavited testimony dated 1st July 2011 respectively.

4. It seems from the record that there is an affidavit in reply below Ex. U-3 filed on behalf of the opponent (original complinant) on record on 15th December 2011; whereby it is contended, that could be taken in short as under :—

(*a*) That being in the capacity of workman the present applicant while seeking *interim-relief* has prayed for thereby relying upon the main application for revision which are inconsistent with the further say that the application for revision itself is not maintainable in law and facts.

(b) According to this opponent, there was no carelessness nor negligence by the Hon'ble 8th Labour Court, while allowing his application for condonation of delay in his complaint of unfair labour practices filed against the present applicant *i.e.* the original respondents in that matter.

(*c*) By allowing his condonation of delay application, no prejudice, loss, injury or damage of whatsoever nature is caused for the present applicant.

(*d*) As the Learned Judge of the 8th Labour Court has passed reasoned order dated 18th June 2011, no interference be made therein by this Court.

(e) The Learned Judge of the 8th Labour Court has allowed his application for condonation of delay rightly and properly and it is in accordance with law so laid down by the various higher Courts. There has been no error nor error apparent on the face of the record while passing impugned order dated 18th June 2011 nor any loss so caused due to the said order so passed nor has any injustice or hardship caused to the said applicant herein in this matter. but thereby the Learned Judge of the Hon'ble 8th Labour Court while passing order dated 18th June 2011 has done justice and thereby kept the doors of the Court of law open to place his grievances accordingly. The grounds taken for present revision on behalf of the applicant company is baseless.

(f) The very order so passed by the Learned Judge of the Trial Court dated 18th June 2011 is totally based upon evidence and it is a reasoned order too.

(*g*) According to this opponent; there was original Complaint (ULP) No. 205/10 which was allowed to be withdrawn on his prayer to grant liberty to file a fresh complaint of unfair labour practices against the present applicant company and that has been taken care of while passing the order dated 18th June 2011 by the Learned Judge accordingly.

(h) The very order dated 8th June 2011 is well within jurisdiction and power of the Hon' ble Trial Court. As the Learned Judge of the Trial Court has taken into account the various just and sufficient grounds for condonation of delay.

(i) While passing the said order dated 18th June 2011, the factum of the appointment of the said Advocate has well been taken note by the Hon'ble Trial Judge. The grounds so wanted to be made in this revision application by the applicant company are not correct but false and the Learned Judge has not misinterpreated the citations all. The applicant be put to strict proof of the same. Therefore, it is lastly prayed that as the Labour Judge of Trial Court has not committed any error while considering his application for condonation of delay therefore the main application for revision so filed by the applicant company (original respondent company) be rejected with costs.

5. Below Ex. C-7 the compilation the Learned Advocate for the applicant company has in all referred to and relied upon 7 case laws, xerox copies thereof so brought on record by him on 30th January 2012 respectively.

6. on behalf of the opponent (original complainant); he has brought on record the very order dated 20th July 2011 of the Assistant P. F. Commissioner, Regional Office, Mumbai-1 (xerox copy) from running page 1 to 13 so attached *vide* Annexure to the said report.

7. On the other hand; the Learned Advocate for the opponent (original complainant) through his compilation below Ex. U-5 has referred and relief upon in all 9 cases on his behalf.

8. The applicant through its Learned Advocate on record below Ex. C-9 has brought on record the xerox-copy of the original application for Condonation of Delay in the original matter before the Learned Judge, 8th Labour Court on record on 21st February 2012 respectively.

9. On the basis of the rival contentions of both sides in this Revision Application (ULP) No. 115/11 as narrated as above, following two issues are being framed by this Court and the same are being answered by this Court through its findings, of course, supported with the reasons thereof as under :—

Issues	*Findings*
(1) Does applicant company (original respondent company) proves that this Revision Application (ULP) No. 115/11 so filed below Exh. C-1 as against the opponent (original complainant) under section 44 of the Act, 1971 is deserved to be allowed ?	No, as per the final order so passed today in the second session.
(2) What order ?	As per the final order so passed today in second session.

Reasons

10. Heard substantially at length both the respective Learned Advocates on 30th January 2012 as well as on 17th February 2012 respectively.

11. Issue No.1.—in this respect; the Learned Advocates for the Revisional Applicant company has submitted before the Court; that in the earlier Complainant (ULP) No. 205/2010, some alleged-typographical-error; the facts of other workman were typed and pleaded in his complaint. That is not the correct-position; but no sonner the interim relief application got rejected; the said complainant as per the order so passed by the Learned Judge of the respective Labour Court on 18th December 2010, another matter got filed *i.e.* Condonation of Delay Application (ULP) No.18/ 11; but though a fresh complaint got filed; it is in relation to his earlier-termination-order; hereby a delay has taken place at the hands of the original complainant; wherein on behalf of the original respondent, now the applicant company has taken a plea; that when there was a challenge in the circumstances to that of employer-employee relationship between them. So also; no justificable strong reasons in favour of the original complainant/alleged workman; even the Learned Judge of the Trial Court has condoned the delay, it is beyond the prescribed-period of limitation as per the

section 28(1) of the MRTU and PULP Act, 1971. Hence; he has taken the shelter of a series of case-laws; through the compilation of below Ex. C-7 as under :—

(1) Pune District Central Co-operative Bank Ltd. *V/s.* Hira Lal Ramchandra Gaikwad [1999 (81) FLR 611]

(2) Nandkumar Kashinath Deorukhkhar and Others *V/s.* Standard Mill Company Ltd. And Another [2006 (5) Mh. L. J. 668]

(3) Bhakra Beas Management Board *V/s.* Krishnan Kumar ViJ and Another [2010 (4) LLN 13]

(4) Aringer Anna Primary Agriculture Co-operative Bank *V/s.* Presiding Officer, Labour Court Pondhicherry and Another [2010 (4) LLN 476]

(5) Dilip Vithatlrao Jogdand *V/s.* Vaidyanath Urban Co-op. Bank Ltd., Beed and 2 others [2007 II CLR 293]

(6) Lanka Venkateswar *V/s.* State of A. P. And Others [2011 AIR SCW 1459]

(7) Naresh Kumar *V/s*. Department of Atomic Energy and Others [2011(128) FLR 64]

In all the matters; by way of case laws 7 in number so taken shelter or by the Learned Advocate for the applicant-company on record; are on the law point of condonation of delay; hence, they have not been reproduces separately; but as narrated above.

12. Then, it is his oral submission , that whatever documents the opponent now through his Learned Advocate on record, has wanted to bring it on record with list Ex. U-4; has nothing to do with the ground objections in respect of the very mainatainability of the said-complaint; it has nothing to do with it.

13. On the other hand; it is oral submission of the Learned Advocate for the opponent (original complainant); that as there was no delay so taken place. Since initially; no action was taken on the part of the employer in respect of his demand letter dated 6th May 2011, Therefore, the Assistant P. F. Commissioner-office, through its letter dated 28th July 2011 passed an order, in respect of the applicant-company (original respondents); giving details through its annexures; particularly *vide* running page 11 with this list below Exh. U-4 letter dated 28th July 2011 which, contains the name of the original-complainant; Lahu D. Vaghat, of course; it does refer to the date of joining ; as well as total emoluments he received each year right from the year 2004-2005 to the year 2010-11 so mentioned therein. It does give an indication, that the opponent now the original-complainant-workman was very well in the employment-with the applicant-company (original-respondent-company) at the material time and having a considerable length of service in the employment of the respondents-company as such. Therefore, on this count also; the original-complainant; as well as the later on the alleged new-complaint so filed by the original complainant; but through his Learned Advocate on record by way of Condonation of Delay Application (ULP) No. 18/11 got filed. And that has been mightly considered by the Learned Judge of the Trial Court; through his findings as far as point No.1 so given and also considered the case laws referred on behalf of both sides to the litigation on thereof; right from para (5) to para (8) of the said judgement; which is impugned in the Revision (ULP) matter.

14. Therefore that order by condoning the delay it any caused need not be reopend and no interference as per section 44 of the act, 1971 at the hands of this Court is called for; in at all. In support of his oral submissions; the Learned Advocate for the opponent (original-complainant-workman) with the compilation below Ex. U-5 has referred to and relied in all 9 case laws :—

(1) Yeshwant Tukaram Jadhav *V/s.* Vithal Dattoba Sankpal ['1976) (O) AIJ MH-111685]

(2) Collector Land Acquisition Anantnag & Another *V/s*. Mst. Katiji and Others [1987 II CLR 92 (S. C.)]

(3) Ganpat Govind Dhale *V/s*. The Commissioner and others (1988 II CLR 157)

(4) Maria Z. Concescio *V/s*. The Principal (1984 II CLR 984)

(5) Bombay Gas Company Employees Union *V/s.* The Bombay Gas Public Ltd. and Another (1994 III LLJ 805).

(6) State of Haryana *V/s.* Chandra Mani and Others (1996 II CLR 504).

(7) Murlidhar S/o. Atmaram Wani *V/s.* Dharangaon Nagar Palika (2008 I CLR 825).

(8) Commissioner, Nagar Parishad, Bhilwara *V/s.* Labour Court, Bhilwara and Anr. (2009 I CLR 233).

(9) Hindustan Lever Mazdoor Sabha *V/s.* Hindustan Lever Limited and Another (1998 I CLR 857).

15. It is in relation to the law-point of limitation; as far as the provisions of the Act, 1971 is concerned; including the judgement of our Hon'ble Bombay High Court (supra; 2008 I CLR 825) And, he has concluded with his oral submission, by pointing out; that a specific liberty was given to the original-complainant now the opponent workman to file a fresh complaint on the same cause of action ; which though admittedly has taken place in respect of the alleged termination on 4th August 2010. However; but there was nothing in response to positively or negatively from the side of the employer company with regard to his demand letter dated 6th May 2011. By pointing out further that the earlier Comp (ULP) No. 205/10 so filed by the same-complainant in respect of his termination dated 4th August 2010 so admittedly got withdrawn by him on 21st January 2011. But, it seems; that the Learned Judge has taken care of and appreciated as though remained silent; while assessing in respect of just and the *bonafide* reasons in respect of the condonation of delay; when already the same complainant now opponent workman has sought a permission while withdrawing his earlier Complaint (ULP) No. 2. 05/10. The Learned Judge; it seems has taken exercise to the effect; as to how the things have taken place and the procedure for which; the certified true copies were required to be sought for and after getting it, a fresh complaint was required to be drafted and filed within the limitation period of 90 days. however; that was not done; but there was delay of 4 months. Since, the Learned Judge has averred and held therein; that there was no reasonable-delay and the reasons so given is just and proper, for condoning the delay as mentioned *vide* para (8) on running page 6; preceded with the discussion so taken place in respect as to how the matter has travelled in respect of the earlier-complaint; already got withdrwn; with the permission to withdraw and file fresh complaint by pointing out successfully by the Learned Advocate for the opponent (original complainant workman); that as there was no response to the demand letter dated 6th May 2011 that amended-letter dated 9th May 2011 so addressed to the respondent-company; the respondent company did not consider it / refuse to do anything. Hence, there was no delay at all.

16. Admittedly, nothing has been brought in contra from the side of the original-respondent-employer-company; nor this applicant company below Ex. C-1; till date. However, it is also not denied by the applicant-company, in respect of issuance of demand letter dated 6th May 2011 later on amended demand letter dated 9th May 2011 addressed to the applicant company/his employer; but when failed to yield any result thereof, the complainant was required to approach the Court though at the later point of time. For the sake of arguement ; it is presumed, that delay of 4 months has taken place *i.e.* beyond the period of 90 days limitation as prescribed under section 28(1) of the MRTU and PULP Act, 1971. It is nothing but admittedly ; a just and proper reason, in other words a good and sufficient-reason as shown and proved by the complainant (original complainant workman) in getting condoned the said-delay.

17. It is not unreasonable or unfair for any man of ordinary prudence; that a litigant should be thrown out of Court of law; at the same time without giving him any opportunity to get his grievances duly ventilated; at the threshould of the litigation, that too on the point of delay. This is also a justifiable and geniuine-reason for the delay so caused ; in filing a fresh complaint and the defect/dereliction at the hands of the earlier Learned-advocate on record should not be ignored. In the result; penalizing the original-litigant (original-complainant-workman) for no fault on his side, is also/would not be desirable/advisable at all.

18. Here in this matter; existence of relationship of employer-employee between the applicant-company, as well as the opponent (original complainant workman) is a furtile exercise. And seems to have taken it as learne-excuse, baseless on its own-footing on the ground, that the name of the complainant (original-complainant workman) now the complainant; Shri Lahu has appeared in the document *i.e.* the Government-document so issued by the Assistant of P. F. Commissioner, Regional-office, Mumbai-1 dated 28th July 2011 with the "Annexure" of the workman's list; for the respective period of the year 2004-05 upto 2010-11 giving details of joining his duty *i.e.* 1st March 2005 and total emoluments; he has drawn per month; is the stark reality, which is based upon the documents *i.e.* public-document itself; that cannot be washed out, but it would definitely diminish the objections so taken to the very maintainability of the original-Complaint (ULP) at the hands of the applicant now original respondent company therein is. However, that does not yield any fruits; but it would definitely support and substantiate the case of the opponent workman in getting the delay so caused; as condoned.

19. It is in the light of the law propounded by the Hon'ble Supreme Court (supra: 1998 I CLR 857): as well as law propounded by our Hon'ble Bombay High Court (supra: 1994 III LLJ 805); and the respective proposition of law; of course; precisely on the point of delay condonation; does apply to the facts and circumstances; but as against the applicant company and in favour of the complainant (original complainant workman); at this juncture.

20. On the other hand; the respective proposition of law so laid down by our Hon'ble Bombay High Court; right from [supra: 1999 (81) FLR 611]; as well as of Hon'ble Supreme Court of India in supra:2011] (128) FLR 64]; with due respect; though has laid down a correct proposition of law, however it does not extend any help and assistance in favour of the applicant-company; at this juncture. It is for the simple reason, that the facts and circumstances as emerged in the original Application for Condonation of Delay (ULP) No. 18/11 dated 18th June 2011, are not identical to that of these reported case laws. If this Court peruses and has gone through; it is worth to appreciate and take a judicial-cognizance of the fact; in which; the original complainant-workman was requird to face a number of difficulties though at the hands of his Learned Advocate on record, at the material; time. Since it is settled principle of law, that the litigant should not be allowed to suffer any loss; on the basis of and on the strength of any negligence of his Learned Advocate on record, whatsoever in nature, for no fault on the side of the litigant concerned. It is also coupled with a strong case in the original Complaint (ULP)-matter; the opponent (original-complainant) was having as against the respondent company in respect of his alleged termination dated 4th August 2010. If not at all considered by the Learned Trial Court in the same matter; that would have nothing short or travesty of justice equity and that would be not incosonce with the airm and objective of the Act, 1971. Hence, parliament/legislation in its wisdom has reflected in the preamble/ airm and objective of this specific statue so codified under the title the MRTU and PULP Act, 1971. Since basically; it is preventive measure for/of unfair labour practice at its threshold. And even prior to completion of the said unfair labour practices by way of apprehension on itself at the hands of the employer-company; is the open-liberty legally provided to the aggrieved-workman/labourer who is always at the receiving end. He should afford to get his grievances duly ventilated, through the appropriate forum of laws; competent to do justice; here in this matter Complaint (ULP) with the respective Hon'ble Labour Court as provided therein. And there is nothing wrong for the Learned Judge; who has passed impugned order in the original Condonantion of Delay Application (ULP) No. 18/2011 dated 18th June 2011.

21. Thereby it is held, that this applicant-company (employer company) below Ex. C-1 has utterly failed to make out his case; as to how and in what way; the impugned order dated 18th June 2011 thereby condoning the delay so caused got allowed; is perverse, patent- perverse, on the very face of the said-order dated 18th June 2011 so impugend in this Revision Petition. On the contraray, it remained to be proved on behalf of the applicant-company below Ex. C-1 as against the opponent (original complainant workman) that in this Revision Application under section 44 of the Act, 1971 is deserved to be allowed.

22. Once it is held, that the order so impugned dated 18th June 2011 so passed by the Learned Judge of the 8th Labour Court; when it does not suffer from any defect on facts and/or in the eyes of law; much less patent-error on the face of the said-order so impugned in this revision-application. Therefore no interference therein as contemplated under section 44 of the Act, 1971 is warranted herein at all.

23. Accordingly the issue No.1 is required to be answered in the negative; thereby holding that the applicant company's revision application below Ex. C-1 filed under section 44 of the Act, 1971; is not deserved to be allowed.

24. *Issue No.2*.—On the basis of the negative findings the court has given to the Issue No.1 as above in the foregoing paras of this judgement; no interfernce therein is warranted at this juncture; at the hands of this court; within the limited jurisdiction and narrow ambit of its powers as contemplated under section 44 of the Act, 1971. In other words since no major draw back/defect nor any infinit so found in the impugend order or passed below Exh. U-1 in the original Condonation of delay Application (ULP) No. 18/2011 dated 18th June 2011; but it is required to be affirmed and confirmed.

25. If it is not done; the original complainant workman would be thrown out at the threshold of the litigation; for no fault on his side at all and that is what precisely has been done by the Learned Judge; by allowing his application for Condonation of Delay *vide* his order dated 18th June 2011. In case, if it was not allowed; the original complainant workman would have suffered a lot. On the other hand; when it has been allowed through impugend order dated 18th June 2011; the applicant company would not suffer anything; nor any prejudice would be caused to it. Since; the applicant company would get a sufficient opportunity to contest the same Complaint (ULP); of course; as per the provisions of the Act, 1971 and get it disposed of finally on merits; preceding with a through enquiry; comprising of both oral and documentary evidence before the Court.

26. With this view in mind; the Issue No.2 stands answered accordingly; in the words and for the reasons as discussed above. Thus, the Court would be justified and fortified; if it proposes to pass the following final order; which would meet the ends of justice equity and good conscience.

Order

(1) The revision Application (ULP) No. 115/2011 so filed below Ex. C-1 under section 44 of the MRTU and PULP Act, 1971; stands dismissed; of course; with a token costs of Rs. 500 payable to the opponent (original complainant No.1); within a month from today with the office of this Court; by way of deposit.

(2) The order so passed below Ex. U-1 in original Condonation of Delay Application (ULP) No. 18/11 dated 16th June 2011 stands affirmed and confirmed.

S. K. SHALGAONKAR,
Member,
Industrial Court, Maharashtra,
Mumbai.

Mumbai,
dated the 27th February 2012.

I/c. Registrar,
Industrial Court, Maharashtra
Mumbai.
dated 20th March 2012.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI A. R. MAHAJAN, MEMBER

REVISION (ULP) NO. 2/2012 In Misc. Cri. COMPLAINT (ULP) No. 2 of 2012.— M/s. India Book Distributors (Bombay) Ltd., 1007/1008, Arcadia, 195, Nariman Point, Mumbai 400 021.—*Applicant. Versus*.—Mr. Santosh Raghunath Desai, C/o. Advocate, Ashish G. Nagwekar, Flat No. 8, Anant Smruti, Opp. Adarsh Nagar, Prabhadevi, Mumbai 400 025.—*Respondent.*

CORAM.— Shri A. R. Mahajan, Member.

Appearances.— Shri R. R. Yadav, Adv. for the Revision Applicant. None for the respondent.

Oral Judgment

(Delivered on 22nd February 2012)

1. This criminal revision application is arising out of and directed against the order passed below Exh. U-1, by Learned presiding officer, 2nd Labour Court, Mumbai on 30th January 2012 by which order, Learned Labour Judge in Misc. Crim. Complaint (ULP) No. 2 of 2012 had issued process of contempt against the respondents/accused No. 1 to 4 on payment of process fee within three days by the original complainant for non compliance of the order dated 28th November 2011 Hence, this criminal revision application. Matter is at the stage of issuance of notice *i.e.* at the stage of passing first order, whether notice to be issued to the original complainant for Labour Court issing process against the present applicant—original respondent. I heard Learned Advocate Shri R. R. Yadav at lenght. It appears that by orginal order of 28th November 2011 relief was granted to as many as 7 employees (original Complainants) before the Labour Court declaring that the respondents have engaged and engaging in unfair labour practices within the meaning of 1(a), (b) and (d) of Schedule IV of the MRTU and PULP Act, 1971 and they were directed to cease and desist from engaging in unfair labour practices as a consequence of this declaration it was further directed by the order to the respondents to reinstate the complainant without back wages with continuity of service w. e. f. 1st August 2008 within two months in their posts, else continue to pay ordinary wages to the complainant. It is pertinent to note that the original respondents as employer has challenged this order by preferring Revision Application (ULP) No. 13 of 2012. Notice was issued to other side. Shri Nagvekar, advocate appeared for the original complainant. Shri Nagvekar, advocate for the original complainant has preferred another Revision Application (ULP) No. 22 of 2012 in which Learned Advocate Shri Yadav who had preferred earlier revision waived service for the respondents and himself appeared *suo moto* in the matter, as such, there are two revision applications before me one of the original respondents and another by the original complainant, for not giving back wages to the complainant employee. It is so glaring and obvious that since no stay has been granted in the revision application preferred by the original respondent bearing Revision Application (ULP) No. 13 of 2012, the order ought to have been obeyed by the employer and for non compliance and non obeyace of the said order, this contempt proceeding has been initiated under section 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in which the process has been issued. Since there was no stay, the Lower Court was justified in issuing process against the original respondents *i.e.* applicants before me. I do not find from the face of the record any infirmity in the order of issuance of process. However, in the alternative, Learned Advocate Shri Yadav submitted that they are ready to comply with the latter part of the order of Clause III of the order are ready to continue to deposit the wages for the present complainant Shri Santosh Raghunath Desai. As such, with this assurance, this revision application stands disposed of without interfering with the order of issuance of process by Learned Labour Judge. The employer shall appear before the Labour Judge

making an application of depositing the amount at the earliest in compliance of the clause III of the order dated 28th November 2011 as mentioned above and shall continue to deposit ordinary wages w.e.f. 1st February 2012. The Labour Court on applicant original respondent depositing the said amount of wages shall endeavour to dispose of the criminal case itself at the earliest considering this change in circumstances of respondents complying with the latter part of the order as mentioned above. Hence, the following order.

Order

1. In view of the order passed above, the Criminal Revision Application stands disposed of.

A. R. MAHAJAN,
Member,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 22nd February 2012.

I/c. Registrar,
Industrial Court, Maharashtra, Mumbai,
dated the 13th March 2012.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI A. R. MAHAJAN, MEMBEER,

REVISION (ULP) NO. 149/2011 COMPLAINT (ULP) No. 306 of 2008.— M/s. Champagne Indage Ltd., Now Known as Indage Vinters Limited, Indage House, 82, Dr. Annie Besant Road, Worli, Mumbai 400 018—*Applicant*.—*Versus*.—(1) Mr. Vincent Raymer, Near Varsha Gas Godown, Behind Trimurthi Complex, M. Varangaon Road, Bhusawal 424 201, (2) The Hon'ble Presiding Officer, Seventh Labour Court, Mumbai.—*Opponents*.

CORAM.— Shri A. R. Mahajan, Member.

Appearances.— Shri G. S. Desai, Adv. for the applicant.

Shri Vincent Raymer Opp. No. 1 in person.

Oral Judgment

(Delivered on 27th February 2012)

1. This revision application is directed against and arising out of the order dated 5th May 2011 passed by Learned Presiding Officer 7th Labour Court, Mumbai in Complaint (ULP) No. 306 of 2008 on preliminary issue of whether the complainant is a 'workman' within the meaning of section 2(*s*) of Industrial Disputes Act and as such 'employee' within the meaning of section 3(*5*) of the Maharashtra Recognition Trade Union and Public Unfair Labour Practice Act, 1971. By the impugned judgment and order, the 7th Labour Court, Mumbai held complainant to be a 'workman' and directed the complaint to proceed further. It appears that the respondent employer had terminated the services of the complainant, who was working as 'Sales Executive' in the respondent company. Complainant has filed this original complaint contending that respondent No. 1 is a limited company duly registered under the Companies Act, 1956 having its registered office at Indalge House, 82, Dr. Annie Besant Road, Worli, Mumbai 400 018. Salary of the complainant is drawn from Head Office at Mumbai. Respondent No. 1 has been established in 1982 having its branches at various places in India including Mumbai and are making and marketing champagnes and wines. Respondent No. 2 is its Managing Director. Respondent No. 3 is HR. Manager. Complainant was appointed on 25th October 2005 as 'Sales Executive' as per the appointment letter which was given later on 16th November 2005. He was later on confirmed by confirmation letter dated 24th April 2006. He was getting salary of Rs. 9,300 per month. He was required to do primary sales for the company. The distributors would book orders for the Company's products directly with the company and payment was directly sent to company *vide* demand draft or cheque and complainant was required to deliver the ordered goods to the Distributors. He was supposed to go to retailers and was required to note down their product requirements. He was required to put up advertising material of company's products at the shops or places where the company's products were sold. He has invoked the provisions of Sales Promotion Employees Act. He had no power to appoint anybody or to dismiss anybody. He had no power to sanction anyone's leave. nobody was working under him. His primary nature of duty was clerical, technical and operational. He never performed managerial, supervisory or administrative nature of work as such he is a 'workman' within the meaning of section 2(s) of Industrial Disputes Act and an 'employee' within the meaning of section 3(*5*) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. He had attended his work till the close of the office hours of 22nd October 2007. As he demanded his salary for the month of Setember, 2007 for having been medically unfit and also submitted his medical certificate. He met his superiors Mr. Mangesh and Mr. Surya. He was threatened and bluntly told to submit his resignation. Therefore, the complainant wrote letter on 22nd October 2007 and sent its copy to the Head Office by fax. In stead of making payment of his salary, complainant was prevented from reporting from duty on 23rd October 2007. He was orally told that his services were terminated with no letter of termination sent to him at any point of time. On 2nd February 2008 when the complainant had gone to respondent company demanding his salary and allowances, a back dated letter was prepared of 23rd October

2007. The complainant protested and objected through his advocate for illegal termination of his services. He got reply from the respondents. It is the case of the complainant that he has been victimised and the action on the part of the respondent is arbitrary and illegal. The provisions of section 25 F of Industrial Disputes Act were not followed. He was dismissed or discharged with undue haste according to him and as such, for this act of the respondents, it is the case of the complainant that respondents have engaged in the acts of unfair labour practices within the meaning of section 1(*a*), (*b*), (*d*) and (*f*) of Schedule IV of the Mahatrashtra Recognation Trade Union and Public Unfair Labour Practice Act, 19971. He therefore, prayed for declaration to this effect and the conseqential relief to direct the respondents to withdraw the order of dismissal and to pay full back wages with continuity of service *w.e.f.* 23rd October 2007. It appears that the respondents on appearing before the Court had preliminary objection that the complainant is not a workman within the meaning of section 2(s) of the Industrial Disputes Act and within the meaning of section 3(*5*) of the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971, since he was appointed as 'Sales Executive', to which as per Exh. U-10, the complainant filed reply. He admitted that he was appointed as 'sales executive' and had worked till 22nd October 2007. His performance was satisfactory. He had no powers of appointment or he had not sanctioned leave of anyone. No employee was working under him and he was performing clerical, technical and operational nature of work and in any event has not performed any managerial, supervisory or administrative nature of duties. His work was only to sale company's products to the distributors and taking cheques from distributors and providing said cheques to the company. He is 'employee' for all purposes within the meaning of the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971 and also Industrial Disputes Act. As such he prayed that preliminary objection be dismissed. That the preliminary issue be answered in the affirmative and in favour of the complainant. The complainant was cross-examined by advocate for the respondent employer below Exh. U-10. There was affidavit of Shri Sanjay Mayekar on behalf of the respondents which is at Exh. C-9. Going by the evidence and document Exh. C-8 *i.e.* the job profile of the complainant which the complainant has admitted that he was supplied with job profile or the duties to be performed by him, the Learned Lower Court answered this core issue in the 'affirmative' and in favour of the complainant holding that he is an 'employee' as such a workman within the meaning of the Industrial Disputes Act and the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971 respectively. Hence, this revision application, I heard Learned Advocate Shri G. S. Desai for the revision Petitioner and the complainant himself, as the party in person. Learned advocate Shri Desai relied upon reported decision in *1994 II LLN 1017 in case of H. R. Adyanthaya and Sandoz (India) Ltd., 1992 I LLN page 13 in case of T. P. Srivastava and National Tobacco Company of India Ltd.* the Apex Court decision dealt with medical representatives holding that he did not perform duites of a skilled or technical nature and as such he is not a 'workman'. After considering these decisions relied upon by Learned Advocate Shri Desai and after hearing the opponent, following points arise for my consideration.

Points	*Findings*
1. Whether the order of ld. Labour Court suffers from any illegality resulting into manifest of injustice or perversity thereby its order becoming unsustainable in the facts and circumstances of this case ?	In the negative.
2. Whether the order of ld. Labour Court requires interference ?	In the negative.
3. What order ?	Revision stands dismissed.

Reasons

2. *Points No. 1 and 2.*—I come to the evedence of the complainant first i.e. Shri Vincent Raymer, the affidavit under Rule 18 of Civil Procedure Code was filed on 23rd April 2010. In para 3(b) of the affidavit, complainant states that he was employed as 'Sales Executive' and placed on

probation *w.e.f.* 25th October 2005. Letter of appointment was given to the complainant on 16th November 2005. He thereafter was confirmed in the service in April, 2006. Bacause of his sincerity and hard work, increment was given to him. It is his case that he was required to do primary sales for the company. The distributors would book orders for the company's products directly with the company and payment *vide* demand draft or cheque used to be sent to the company directly and the complainant was required to deliver the ordered goods to the distributors. He was required to go to retailers and note down their reqirements for the company's products. He was required to put up advertising material of the company's products at the shops or places where the company's products were sold. He refers to Sales Promotion Employees Act and then he states that he had no power to appoint or dismiss anyone. The complainant had no financial powers and he had no powers to sancton leave of anyone, no employee was working under him and that he was performing clerical, technical and operational nature of work. He did not perform any supervisory, managrial or administrative work, and therefore, claims to be a workman within the meaning of section 2(5) of Industrial Disputes Act and section 3(*5*) of the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971. Rest of the evidence, in the affidavit, is of no use in order to decide the preliminary objection, if the complainant is a 'workman' as stated above. Therefore, I directly come to the cross-examination of this witness (It appears that the cross-examination has been continued as part of affidavit in reply to the preliminary objection which is at Exh. U-10. In order to decide this core issue of 'workman' the cross-examination should have been in the evidence in the form of affidavit submitted before the Court and not on the reply to the preliminary objection. However, I propose to read the same since the averments and the defence taken by the complainant to the preliminary objection in affidavit in reply and in his affidavit *in lieu of* examination in chief is the same. From recross-examination of the complainant, it appears that he has been staying at Bhusawal in MIDC Area. He admits in the cross examination that he was working in the company as per the job profile stating that the company was engaged in manufacturing of and sale of wine and further states that no employee was working with him and he was reporting to Shri Sunil Mirchandani, Area Sales Manager. He was implementing the scheme which the company was giving to promote the brand and sale. He was required convince the retailers. He had identified new outlets to the company. Then we come to the evidence of Shri Sanjay Mayekar. In para 5 of his affidavit he states about the job profile of the complainant, what job he was required to perform as a 'Sales Executive'. These are 24 various kinds of duties, the complainant was supposed to perform as a 'sales executive'. Shri Mayekar was cross-examined by the complainant in person. He states that as 'Sales Executive' complainant has no power to sanction his own leave. The complainant has to frame the scheme and get it approved from the seniors. The complainant was required to report in writing about the stock and sale of the products every month. It appears that the Sunil Mirchandani had left service since he got better opportunity. But, he denied that as complainant claimed T. A. and D. A., he has been removed. Admits that some of the allowances are pending stating that complainant has failed to report for duties, the allowances are pending. Then he states that nature of the duties of the complainant was to promote the products of the company. If one reads the job profile of the complainant, it becomes difficult to infer that he had any power of either sanctioning anybody's leave or even to recommend somebody's leave. He was working totally in isolation in an area given to him. There is no horizontal chain nor there is vertical chain below the complainant to whom the complainant has given order or got plan implemented from them. Merely, because there is admission on the part of the complainant that he was working as per job profile supplied to him does not necessarily mean that he was performing duties of managerial or supervisory or doing any administrative work. The Sales Promotion Employees Act or nothing for that matter applicable to Medical Representatives and any decision pursuant to them where these medical representatives claiming them to be workman which has been turned down by the Hon'ble Apex Court or Hon'ble Bombay High Court does not come to help of the respondent to substantiate their point that the complainant cannot be called as workman within the meaning of section 2(*s*) of the Industrial Dispute Act and section 3(*5*) of the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971. What becomes relevant is nature of duties and the job which the complainant was Performing totally in isolation as one

person and nobody below him and complainant reporting directly to the area sales manager. Complainant has no power to draw his own work plans and implement them on his own for implementing his own design or anything for promoting the sale of the company, he was required to have its sanction from his superiors. Any rulings on Sales Promotions Employees Act is not applicable when the decision of the Hon'ble Apex Court in Sandoz (India) Ltd. is specially dealing with the Medical Representative and their contention they are the workman, I do not find that the analogy laid down in Sandoz is squarely applicable to the facts and circumstances of the present case. The Labour Court may have faultered at many places where it could have directly dealt with the objection raised by the respondents it has parried that issue and deviated from both to answer that issue in favour of the complainant. Here the ultimate result is important and not the analysis of objection raised by the respondents. The job profile does not prove that the complainant was performing any managerial or supervisory functions. He may have been designated as sales executive that does not by itself show that he was executive and as such performing managerial, administrative or executive functions or even supervisory functions for that matter. I do not find any infirmity in the Judgment and order passed by the Learned Labour Court when it has dismissed the preliminary objection raised by the respondents about the status of the complainant as a 'workman'. The findings and the rasonings may not found that sound but in the ultimate analysis the Learned Lower Court came to a correct conclusion that complainant is workman within the meaning of section 2(*s*) of Industrial Disputes Act and a 'employee' within section 3(*5*) of the Maharashtra Recognation Trade Union and Public Unfair Labour Practice Act, 1971. I do not find that there is any perversity or the order is of such a nature which would result in manifest of injustice to the respondent. If I am to answer this issue and point in favour of the respondents it will have serious implications and deprive the complainant of justice before the Industrial Court. I therefore, answer this point No. 1 in the Negative and also point No. 2 in the negative. The Judgment and order passed by the Labour court does not require any interference and therefore, revision application fails and deserve to be dismissed with no order as to costs. Hence, the following order.

Order

(1) Revision application stands dismissed.

(2) The order passed by the Learned Labour Judge 7h Labour Court, Mumbai Complaint (ULP) No. 306 of 2008 dated 5th May 2011 stands confirmed as regards to preliminary objection about the status of the complainant as a workman.

(3) In the facts and circumstances of the case, there shall be no order as to costs.

(4) Record and proceedings be sent to Labour Court.

Mumbai,
dated the 27th February 2012.

A. R. MAHAJAN,
Member,
Industrial Court, Maharashtra, Mumbai.

I/c. Registrar,
Industrial Curt, Maharashtra Mumbai,
dated the 13th March 2012.

पुढील अधिसूचना इत्यादी असाधारण राजपत्र म्हणून त्यांच्यासमोर दर्शविलेल्या दिनांकांना प्रसिद्ध झालेल्या आहेत :—

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गुरुवार, मे २२, २०१४/ज्येष्ठ १, शके १९३६

उद्योग, ऊर्जा व कामगार विभाग

मादाम कामा रोड, हुतात्मा राजगुरू चौक, मंत्रालय, मुंबई ४०० ०३२,
दिनांक २२ मे २०१४.

अधिसूचना

महाराष्ट्र दुकाने व आस्थापना अधिनियम, १९४८.

क्रमांक एमएसए. ०२/२०१४/प्र.क्र. ४१/कामगार-१०.— महाराष्ट्र दुकाने व आस्थापना अधिनियम, १९४८ (१९४८ चा मुंबई एकोणऐंशी) (यात यापुढे ज्याचा " उक्त अधिनियम " असा उल्लेख करण्यात आलेला आहे) याच्या कलम ४च्या परंतुकाद्वारे प्रदान करण्यात आलेल्या अधिकाराचा वापर करून, महाराष्ट्र शासन याद्वारे, उक्त अधिनियमाच्या अनुसूची दोन मध्ये खालीलप्रमाणे सुधारणा करीत आहे :—

उक्त अधिनियमाच्या अनुसूची दोन मधील क्रमांक " ६५३ " नंतर खालील नोंदीचा समावेश करण्यात येईल :—

" ६५४	मे. क्युओनी बिझिनेस ट्रॅव्हल इंडिया प्रा. लि., दहावा माळा, ऊर्मि ईस्टेट, ९५, गणपतराव कदम मार्ग, लोअर परळ (प.), मुंबई ४०० ०१३.	उक्त अधिनियमाच्या कलम १३, १८ व ३३(३) मधून खालील शर्तींच्या अधीन राहून,— (१) सदर सूट ही **शासन राजपत्रात** अधिसूचना प्रसिद्ध झाल्याच्या दिनांकापासून एक वर्षाच्या कालावधीकरिता लागू राहील. (२) प्रत्येक कर्मचाऱ्यास त्याच्या वेतनातून कुठल्याही प्रकारची कपात न करता आठवड्यातून एक दिवस भरपगारी सुट्टी देण्यात यावी व सुट्टीसंबंधीचे प्रत्येक महिन्याचे वेळापत्रक सूचना फलकावर आगाऊ लावण्यात यावे. (३) प्रत्येक कर्मचाऱ्यास सलग पाच तास काम केल्यावर एक तासाची विश्रांती देण्यात यावी. (४) आठवड्याच्या व इतर सुट्टीच्या दिवशी संमतीपत्र दिलेल्या कर्मचाऱ्यांना कामावर ठेवण्यात यावे. (५) कर्मचाऱ्यास दररोज ९ तास किंवा आठवड्यामध्ये ४८ तासांपेक्षा जास्त काम करणे आवश्यक असणार नाही व दररोजच्या कामाची व्याप्ती ११ तासांपेक्षा जास्त असणार नाही. (६) प्रत्येक कर्मचाऱ्यास आस्थापनेकडून कलम २५ नुसार ओळखपत्र देण्यात यावे.

(७) महिला कर्मचाऱ्यांना सुरक्षेसह घरपोच मोफत वाहतुकीची सुविधा देण्यात यावी.

(८) महिला कर्मचाऱ्यांसाठी कामाच्या ठिकाणी स्वतंत्र लॉकर, सुरक्षा व विश्रांतीगृह यांची व्यवस्था करण्यात यावी.

(९) आस्थापनेत महिला लैंगिक छळवाद प्रतिबंध करण्यासाठी तक्रार निवारण समिती स्थापन करण्यात यावी.

(१०) आस्थापना बंद करण्याच्या वेळेतून सूट देण्यात येत असल्याने वाढीव कामासाठी नवीन कर्मचारी नियुक्त केले जावेत.

(११) कोणत्याही कर्मचाऱ्यास त्याच्या अतिकालिक कामाबद्दल कलम ६३ मध्ये विहित केलेल्या दराने अधिक वेतन देण्यात यावे.

(१२) कर्मचाऱ्यांना राष्ट्रीय व सणाच्या सुट्ट्या वेतनासह देण्यात याव्यात.

(१३) सदर सूट ही समंतीपत्र दिलेल्या कामगारांपुरतीच मर्यादित राहील.

(१४) सदर सूट ही महाराष्ट्र दुकाने व आस्थापना अधिनियम, १९४८ पुरतीच मर्यादित आहे.

(१५) वरील अटी व शर्तींव्यतिरिक्त अधिनियमातील इतर तरतुदी आस्थापनेस यथास्थिती लागू राहतील.

(१६) वरीलपैकी कोणत्याही अटीचा व शर्तीचा भंग झाल्यास सूट आपोआप रद्द होईल. ”

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

अ. म. बाविस्कर,
कार्यासन अधिकारी.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. MSA.02/2014/CR-41/LAB-10, dated the 22nd May 2014 is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Madam Cama Road, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 22nd May 2014.

NOTIFICATION

MAHARASHTRA SHOPS AND ESTABLISHMENT ACT, 1948.

No. MSA.02/2014/CR-41/LAB-10.— In exercise of the powers conferred by the proviso to Section 4 of the Maharashtra Shops and Establishment Act, 1948 (Bom. LXXIX of 1948) hereinafter referred to as the said Act, the Government of Maharashtra hereby amends Schedule II of the said Act as follows, namely :—

In Schedule II of the said Act, after entry " 653 " the following Entry shall be added, namely :—

" 654	M/s. Kuoni Business Travel India Pvt. Ltd., 10th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel (W.), Mumbai 400 013.	Sections 13, 18 and 33(3) subject to the following conditions:— (1) This exemption shall remain in operation for the period of one year from the date of notification published in *Government Gazette*. (2) Every employee shall be given one day holiday in a week without making any deductions from his/her wages on account thereof and list of the time table of such holidays for a month shall be placed on the notice board in advance. (3) Every employee shall be given a rest period of one hour after 5 hours of continuous work. (4) The employees, who have given their consent be only placed on the day of weekly holiday or other holiday. (5) No employee shall be required to work for more than 9 hours in a day or 48 hours in a week. The spread over of an employee shall not exceed 11 hours in a day. (6) Every employee shall be provided Identity Card according to the Section 25. (7) The Female employees shall be provided escorted transport facility from establishment to resident.

(8) Female employees shall be provided separate lockers, security and rest rooms at the work place.

(9) Complaint Redressal Committee against sexual harassment of women should be established.

(10) As the exemption is given from closing time of the establishment, new staff shall be appointed for the extended work.

(11) The employees shall be entitled to overtime wages in accordance with Section 63 of the said Act.

(12) Employees shall be given national and festival holidays with wages.

(13) This exemption is limited to the employees who have given their consent.

(14) This exemption is related only to Bombay Shops and Establishment Act, 1948.

(15) In spite of these terms and conditions, all the provisions of this Act shall applicable to the establishment duly.

(16) In case of violation of any of the above terms and conditions, the exemption shall stand cancelled automatically."

By order and in the name of the Governor of Maharashtra,

A. M. BAWISKAR,
Section Officer.

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शुक्रवार, मे २३, २०१४/ज्येष्ठ २, शके १९३६

उद्योग, ऊर्जा व कामगार विभाग

हुतात्मा राजगुरू चौक, मादाम कामा रोड, मंत्रालय, मुंबई ४०० ०३२, दिनांक २३ मे २०१४

अधिसूचना

महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) अधिनियम, १९८१.

क्रमांक एसजीए. २०१४/प्र. क्र. १/काम-२ :—ज्याअर्थी, ज्यांची नावे यासोबत जोडलेल्या अनुसूची १ च्या स्तंभ (२) मध्ये नमूद केलेली आहेत अशा विवक्षित सुरक्षा रक्षकांना (यात यापुढे ज्यांचा उल्लेख "उक्त सुरक्षा रक्षक" असा करण्यात आला आहे), उक्त अनुसूची १ च्या स्तंभ (४) मध्ये नमूद केलेल्या मुख्य मालकांकडे कामावर ठेवलेले आहे, अशा मे. औरंगाबाद मल्टी सर्व्हिसेस, १०१, १०२, अक्षयदीप प्लाझा, सिडको बस स्टॅन्डजवळ, औरंगाबाद ४३१ ००३ (औरंगाबाद जिल्ह्याकरिता) व मालक श्री. सुभाष दादाराव शिंदे यांनी महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) अधिनियम, १९८१ (१९८१ चा महा. ५८) याच्या कलम २३ अन्वये, उक्त अधिनियमाच्या सर्व तरतुदी आणि महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) योजना, २००२ (यात यापुढे ज्याचा उल्लेख "उक्त योजना" असा करण्यात आला आहे) यांच्या अंमलबजावणीतून सूट मिळण्यासाठी अर्ज केला आहे ;

आणि ज्याअर्थी, सल्लागार समितीशी विचारविनिमय केल्यानंतर व उक्त सुरक्षा रक्षकांना मिळत असलेल्या लाभांची पडताळणी केल्यानंतर, त्यांना मिळत असणारे लाभ हे उक्त अधिनियमाद्वारे व त्या अधिनियमान्वये आणि उक्त योजनेद्वारे व तद्न्वये तरतूद केलेल्या लाभांपेक्षा एकंदरीत पाहता कमी फायदेशीर नाहीत असे महाराष्ट्र शासनाचे मत झालेले आहे.

त्याअर्थी, आता, महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) अधिनियम, १९८१ याच्या कलम २३ अन्वये प्रदान केलेल्या अधिकारांचा वापर करून महाराष्ट्र शासन याद्वारे उक्त अधिनियमाच्या व उक्त योजनेच्या सर्व तरतुदींच्या अंमलबजावणीतून उक्त खाजगी सुरक्षा रक्षकांना, यासोबत जोडलेल्या अनुसूची-२ मध्ये विनिर्दिष्ट केलेल्या शर्तींच्या अधीन राहून, **राजपत्रात** ही अधिसूचना प्रसिद्ध केल्याच्या दिनांकापासून तीन वर्षांच्या कालावधीसाठी सूट देत आहे.

अनुसूची १

अ.क्र. (१)	सुरक्षा रक्षकाचे नाव (२)	वर्ग (३)	मुख्य मालकाचे नाव व पत्ता (४)
१	महेंद्रसिंग रामराव इंगळे	सुरक्षा रक्षक	मे. सान्या मोटर्स प्रा. लि., चिखलठाणा एमआयडीसी, औरंगाबाद.
२	मनोज भानुदास कारडिले	सुरक्षा रक्षक	–"–
३	संजय विद्याधर देशमुख	सुरक्षा रक्षक	–"–
४	भिमराव काशिनाथ भिमसेन	सुरक्षा रक्षक	–"–
५	राधाकृष्ण दशरथ जाधव	सुरक्षा रक्षक	–"–
६	नारायण आत्माराम इंगळे	सुरक्षा रक्षक	–"–
७	ज्ञानेश्वर एकनाथ कळमकर	सुरक्षा रक्षक	मे. सान्या मोटर्स प्रा. लि., वाळुंज एमआयडीसी, औरंगाबाद.
८	आत्माराम वामनराव प्रधान	सुरक्षा रक्षक	—,,—
९	धनंजय वसंतराव गवळी	सुरक्षा रक्षक	—,,—
१०	दिलीप लक्ष्मण जाधव	सुरक्षा रक्षक	—,,—
११	राजेंद्र शंकर पाटील	सुरक्षा रक्षक	—,,—
१२	गजानन सखाराम पांचाळ	सुरक्षा रक्षक	—,,—
१३	शिवाजी तुळशीराम नजन	सुरक्षा रक्षक	—,,—
१४	श्रीधर नारायण वाघ	सुरक्षा रक्षक	—,,—
१५	कृष्णा मच्छिंद्र थोटे	सुरक्षा रक्षक	—,,—
१६	प्रल्हाद नानाभाऊ निवारे	सुरक्षा रक्षक	मे. फोरेस इंजिनिअरिंग (इं) लि., एम.आय.डी.सी., पैठण, औरंगाबाद.
१७	संजय उत्तमराव पवार	सुरक्षा रक्षक	—,,—
१८	संजय हरकासिंग राई	सुरक्षा रक्षक	—,,—
१९	विजय नामदेव निळ	सुरक्षा रक्षक	—,,—
२०	बाबासाहेब भाऊ घुले	सुरक्षा रक्षक	—,,—
२१	दिगंबर गंगाधर इंगळे	सुरक्षा रक्षक	—,,—
२२	सदाशिव रामचंद्र कुलकर्णी	सुरक्षा रक्षक	—,,—
२३	प्रल्हाद केशवराव झिरपे	सुरक्षा रक्षक	—,,—
२४	बबन गणपतराव मंचरे	सुरक्षा रक्षक	—,,—
२५	काशिनाथ विठ्ठलराव शेळके	सुरक्षा रक्षक	—,,—
२६	शेषराव प्रल्हाद टाकरस	सुरक्षा रक्षक	मे. लक्ष्मी अग्नी कंपो. ॲण्ड फोर्जिंग प्रा. लि., औरंगाबाद.
२७	सुरेश विश्वनाथ कोलते	सुरक्षा रक्षक	—,,—
२८	लक्ष्मण भिका सपकाळे	सुरक्षा रक्षक	—,,—
२९	सुभाष कचरू दांडगे	सुरक्षा रक्षक	—,,—
३०	पुजाराम विठ्ठल पोटे	सुरक्षा रक्षक	—,,—
३१	रमेश किसनराव हिंगमारे	सुरक्षा रक्षक	—,,—
३२	केशव सुभाषराव जाधव	सुरक्षा रक्षक	—,,—
३३	अनिरूद्ध यादवराव गाडे	सुरक्षा रक्षक	—,,—
३४	साईनाथ दादाराव घुगे	सुरक्षा रक्षक	—,,—
३५	प्रफुल विनायकराव चव्हाण	सुरक्षा रक्षक	—,,—
३६	सदानंद भिमराव जमधडे	सुरक्षा रक्षक	—,,—
३७	नंदकिशोर गोरखसिंग सोळुंके	सुरक्षा रक्षक	—,,—
३८	अंबादास प्रभाकर पाठक	सुरक्षा रक्षक	—,,—
३९	अशोक हरसिंग सोळुंके	सुरक्षा रक्षक	—,,—
४०	अण्णासाहेब भागाजी भगत	सुरक्षा रक्षक	—,,—

अनुसूची १—समाप्त.

(१)	(२)	(३)	(४)
४१	गजानन उमाशंकर मिटकरी	सुरक्षा रक्षक	मे. बिर्ला प्रिसिजन टेक्नॉलॉजी लि., इंडियन टुल्स डिव्हीजन, वाळुंज, औरंगाबाद.
४२	राजू गांगाधर पांचाळ	सुरक्षा रक्षक	—,,—
४३	भगवान आत्माराम साळवे	सुरक्षा रक्षक	—,,—
४४	राजेंद्र हिम्मतराव देशमुख	सुरक्षा रक्षक	—,,—
४५	संजय केशवराव तरफदार	सुरक्षा रक्षक	—,,—
४६	परमेश्वर सखाराम पवार	सुरक्षा रक्षक	—,,—
४७	हरी नारायण भुतेकर	सुरक्षा रक्षक	—,,—
४८	हरिश्चंद्र आसाराम वाहुळे	सुरक्षा रक्षक	मे. बिर्ला प्रिसिजन टेक्नॉलॉजी लि., फाँड्री डिव्हीजन, औरंगाबाद.
४९	नानासाहेब धर्मराज उबाळे	सुरक्षा रक्षक	—,,—
५०	प्रभाकर नारायण खाडेकर	सुरक्षा रक्षक	—,,—
५१	महानंदा दगडू बर्गे	सुरक्षा रक्षक	—,,—
५२	साहेबराव रामचंद्र खोतकर	सुरक्षा रक्षक	—,,—
५३	संभाजी नाजुकराव जाधव	सुरक्षा रक्षक	—,,—
५४	किसन अण्णाराव पठाडे	सुरक्षा रक्षक	मे. क्लिअर मायपॅक पॅकेजिंग सोल्युशन लि., शेंद्रा, औरंगाबाद.
५५	सदाशिव सिताराम ढगे	सुरक्षा रक्षक	—,,—
५६	रावसाहेब चोखाजी सावळे	सुरक्षा रक्षक	—,,—
५७	मनोहर सोमीनाथ मत्ते	सुरक्षा रक्षक	—,,—
५८	अलका झनक खरात	सुरक्षा रक्षक	—,,—
५९	गौतम बाबुराव ढगे	सुरक्षा रक्षक	—,,—
६०	गोपीचंद किसनराव खराडे	सुरक्षा रक्षक	—,,—

टीप.—महाराष्ट्र शासन या सुरक्षा रक्षकांबाबत कोणत्याही प्रकारची हमी घेत नाही. मुख्य मालक स्वत:च्या जबाबदारीवर सुरक्षा रक्षकांना कामे देऊ शकतात.

अनुसूची २

मालक एजन्सीने व मुख्य मालकांनी पाळावयाच्या शर्ती

१. **पोलीस तपासणी.—** सुरक्षा रक्षकांच्या तसेच एजन्सीच्या मालकांच्या पूर्वइतिहासाबाबत पोलीस पडताळणी दाखला तसेच एजन्सीकडे केंद्र शासनाच्या खाजगी सुरक्षा रक्षक (नियमन) कायदा, २००५ अंतर्गत परवाना असणे आवश्यक असेल.

२. **प्रशिक्षण.—** सुरक्षा रक्षकांना नियुक्त करण्यापूर्वी पुरेसे प्रशिक्षण देणे आवश्यक असेल.

३. **शैक्षणिक, शारीरिक आणि इतर पात्रता.—** सुरक्षा रक्षकांची शैक्षणिक व शारीरिक पात्रता पुढीलप्रमाणे असेल :—

किमान शैक्षणिक पात्रता.— इयत्ता ८ वी उत्तीर्ण.

शारीरिक पात्रता.— (अ)(१) उंची - १६२ सें.मी.

(२) वजन - ५० किलो

(३) छाती - न फुगवता - ७९ सें.मी.

फुगवून - ८४ सें.मी.

(४) नजर - दृष्टी चष्मा असल्यास नंबर जास्त नसावा.

(ब) आदिवासी उमेदवारांना उंचीमध्ये ५ सें.मी. व छातीमध्ये २ सें.मी. ची सवलत देण्यात यावी.

४. **लाभ.—** सुरक्षा रक्षकांना पुढील लाभ मिळतील :–

(अ) गणवेश प्रत्येक वर्षाला २ जोड.

(ब) चामडी बूट प्रत्येक वर्षात १ जोड.

(क) पावसाळी व हिवाळी गणवेश— (२ वर्षांतून एकदा) रेनकोट, ट्राऊझर, टोपी, वूलन कोट व पँट.

५. **वेतन व इतर कायदेशीर सवलती.—** सूट दिलेल्या सुरक्षा रक्षकाने राष्ट्रीयीकृत बँकेमध्ये आपले खाते उघडावे व मालक एजन्सीने मुख्य मालकाकडे तैनात केलेल्या सुरक्षा रक्षकांच्या देय वेतनाच्या रकमेइतका रेखांकित धनादेश ७ तारखेपर्यंत वैयक्तिकरित्या सुरक्षा रक्षकास द्यावा. सुरक्षा रक्षकास दिलेल्या वेतनाबाबतचे सविस्तर तपशील नमुना " क " मधील विवरणपत्रामध्ये भरून सुरक्षा रक्षक मंडळास दर महिन्याच्या १० तारखेपर्यंत पाठवावे. मालक एजन्सीने खाली दर्शविल्याप्रमाणे लाभ सुरक्षा रक्षकांना द्यावेत :–

सानुग्रह अनुदान	:	वेतनाच्या १० टक्के
उपदान	:	वेतनाच्या ४ टक्के
भरपगारी रजा	:	वेतनाच्या ६ टक्के
भरपगारी सुट्टी	:	वेतनाच्या १ टक्का

सुरक्षा रक्षकांना लागू असलेल्या भविष्य निर्वाह निधी व कामगार राज्य विमा योजना यांच्या वजाती मालक एजन्सीने परस्पर संबंधित प्राधिकरणाकडे जमा कराव्यात आणि त्यांचे चलन माहितीसाठी मंडळास सादर करावे. मालक एजन्सीने भरणा केलेल्या भविष्यनिर्वाह निधी व कामगार राज्य विमा योजनेच्या वजातीबाबतच्या पावत्या/चलन सुरक्षा रक्षकांना नियमितपणे देऊन त्या संदर्भातील एकत्रित तपशील शासनास, कामगार आयुक्त कार्यालयास व सुरक्षा रक्षक मंडळास प्रत्येक ६ महिन्यांनी सादर करावा, असे न केल्यास मालक एजन्सीला जबाबदार धरून दिलेली सूट रद्द करण्यात येईल.

६. **अतिकालिक भत्ता.—** सुरक्षा रक्षकांना मिळणारा अतिकालिक भत्ता हा मंडळाने नोंदीत सुरक्षा रक्षकांसाठी निश्चित केलेल्या वेतन दराच्या दुप्पट दरापेक्षा कमी नसावा, याबाबत संबंधित मुख्य मालकाची अंतिम जबाबदारी राहील.

सुरक्षा रक्षकांना देय वेतन व लाभ देणे मुख्य मालकांची जबाबदारी असून मुख्य मालकाने त्यांच्याकडे तैनात करण्यात आलेल्या सुरक्षा रक्षकांना अधिनियम आणि योजनेतील तरतुदींनुसार वेतन व लाभ मिळत आहेत याची खात्री करून घेणे बंधनकारक असेल.

७. **विवरणपत्र सादर करणे.— (अ) त्रैमासिक विवरणपत्र.—**मालक एजन्सीजने सुरक्षा रक्षकांच्या नियुक्तीबाबतचे त्रैमासिक विवरणपत्र प्रत्येक त्रैमासिकाच्या (जानेवारी, एप्रिल, जुलै व ऑक्टोबर महिन्याच्या) पहिल्या आठवड्यात सोबत जोडलेल्या नमुना " अ " मध्ये शासन, कामगार आयुक्त आणि सुरक्षा रक्षक मंडळास सादर करावे.

(ब) सहामाही विवरणपत्र.— (१) नियुक्त केलेल्या, नोकरी सोडून गेलेल्या आणि नव्याने भरती केलेल्या सुरक्षा रक्षकांबाबतचे विवरणपत्र दर ६ महिन्यांनी सोबत जोडलेल्या नमुना " ब " मध्ये शासन, कामगार आयुक्त आणि सुरक्षा रक्षक मंडळ यांना एजन्सीने सादर करावे.

(२) भविष्यनिर्वाह निधी व राज्य कामगार विमा योजनेची वर्गणी एजन्सीने नियमित भरून संबंधित सुरक्षा रक्षकांना त्यासंबंधी वेळोवेळी पावत्या द्याव्यात व दर सहा महिन्यांत तसे केल्याबाबतचा अहवाल शासनास, कामगार आयुक्त व सुरक्षा रक्षक मंडळास द्यावा.

(३) यापूर्वीच्या भविष्यनिर्वाह निधीच्या रकमा व राज्य कामगार विमा योजनेची वर्गणी भरल्याबाबतचा पुरावा शासनाकडे सदर अधिसूचना निर्गमित झाल्यापासून तीन महिन्यांच्या आत सादर करावा. अन्यथा संबंधित सुरक्षा रक्षकांना देण्यात आलेली सूट रद्द करण्यात येईल.

(क) वार्षिक विवरणपत्र.— प्रत्येक मालक एजन्सीने, सनदी लेखापाल यांनी प्रमाणित केलेले वार्षिक विवरणपत्र सोबत जोडलेल्या नमुना " ड " मध्ये दरवर्षी ३० जून पर्यंत शासनास तसेच मंडळास सादर करावे. ज्यात एजन्सीने भरलेला आयकर, सुरक्षा रक्षकांचा जमा केलेला भविष्य निर्वाह निधी व कामगार राज्य विमा याबाबतच्या चलनाच्या प्रती व इतर तपशील असेल.

८. **एजन्सीची व सूट प्राप्त सुरक्षा रक्षकांची मंडळाकडे नोंदणी.—** अधिसूचनेच्या दिनांकापासून एक महिन्याच्या कालावधीत उक्त मंडळाकडे महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) योजना, २००२ च्या खंड १३(२) व १४(३) मधील तरतुदींनुसार एजन्सीजने स्वत:ची मालक म्हणून आणि त्यांच्याकडील सूट प्राप्त सुरक्षा रक्षकांची विहित नमुन्यातील अर्ज व शुल्क भरून मंडळात नोंदणी करून घ्यावी.

९. **एजन्सीच्या मुख्य मालकांची मंडळाकडे नोंदणी.—** सूट प्राप्त सुरक्षा रक्षकांच्या एजन्सीमार्फत सुरक्षा रक्षक नियुक्त करणाऱ्या मुख्य मालकाने अधिसूचनेच्या दिनांकापासून १५ दिवसांचे आत योजनेच्या खंड १३(१)(अ) अन्वये स्वत:ची मंडळात विहित नमुन्यातील अर्ज व शुल्क भरून नोंदणी करून घ्यावी.

१०. **नोंदणी शुल्क.—** एजन्सीने तसेच सूट प्राप्त सुरक्षा रक्षकाने मंडळाकडे नोंदणी करतेवेळी महाराष्ट्र खाजगी सुरक्षा रक्षक (नोकरीचे नियमन व कल्याण) योजना, २००२ च्या खंड १७ मधील तरतुदींनुसार मंडळाकडे विहित कालावधीत आवश्यक ते नोंदणी शुल्क भरले पाहिजे.

११. **नोंदणीकृत कार्यालय.—** एजन्सीचे नोंदणीकृत कार्यालय असावे आणि त्याबाबतची माहिती एजन्सीने शासन, कामगार आयुक्त व मंडळास द्यावी. नोंदणीकृत कार्यालयाचा पत्ता बदलल्यास अथवा एजन्सीच्या नावात बदल झाल्यास १५ दिवसांचे आत बदलाबाबतच्या आवश्यक त्या कागदोपत्री पुराव्यासह शासनास व मंडळास कळवावे, जेणेकरून शासन सुधारित अधिसूचना जारी करील. सुधारित अधिसूचना जारी झाल्यानंतर मंडळ झालेल्या बदलांची नोंद घेईल.

१२. **सुरक्षा रक्षकांची नियुक्ती.—** उक्त मंडळाकडे ज्या मुख्य मालकांची नोंदणी झाली आहे आणि/किंवा जे उक्त मुख्य मालक मंडळाच्या सुरक्षा रक्षकांच्या सेवेचा लाभ घेत आहेत अशा मुख्य मालकांकडे एजन्सी त्यांचेकडील सुरक्षा रक्षक नेमणार नाही. अशाप्रकारे सुरक्षा रक्षक नेमल्यास मालक एजन्सीला जबाबदार धरून दिलेली सूट रद्द करण्यात येईल.

१३. **ओळखपत्र व हजेरी कार्ड देणे.—** खाजगी सुरक्षा रक्षक एजन्सी त्यांचेकडील सुरक्षा रक्षकांना व अधिकाऱ्यांना नियुक्त केल्यापासून ३० दिवसांच्या आत ओळखपत्र व हजेरीकार्ड देईल.

१४. **कायदेशीर देणी अदा करणे.—** सुरक्षा रक्षक ज्यावेळी एजन्सीची नोकरी सोडतील, त्यावेळी त्यांना देय असलेली सर्व कायदेशीर देणी (उपदान व इतर कायदेशीर देणी) एजन्सीने अदा करून त्याबाबत झालेल्या व्यवहारांच्या प्रती मंडळाकडे सादर करणे एजन्सीला बंधनकारक राहील.

१५. **एकावेळी एकाच मुख्य मालकाकडे नोकरी.—** सुरक्षा रक्षक एकावेळी एकापेक्षा अधिक मुख्य मालकाकडे काम करणार नाही. याबाबत प्रत्येक सुरक्षा रक्षक एजन्सीने खात्री करून घेतली पाहिजे.

१६. एखाद्या सुरक्षा रक्षकास त्याच्या निवासस्थानापासून ५० कि.मी. पेक्षा अधिक अंतरावर काम करण्यासाठी पाठविल्यास मालक एजन्सीने त्याच्या एकूण वेतनाच्या २० टक्के रक्कम त्याला भत्ता म्हणून द्यावी.

१७. सुरक्षा रक्षकांच्या फायद्यांसंदर्भात शासनाने किंवा मंडळाने भविष्यकाळात घातलेल्या अटी व शर्तींचे पालन करणे एजन्सीला, तसेच मुख्य मालकाला बंधनकारक राहील.

१८. मालक एजन्सीने त्यांच्या सुरक्षा रक्षकांना सूट प्राप्त झाल्यानंतर, सुरक्षा रक्षकांच्या वेतनाच्या ३ टक्के एवढी लेव्ही दरमहा १० तारखेपर्यंत मंडळास देय राहील. सदर लेव्ही अधिसूचना निर्गमित झाल्याच्या दिनांकापासून १ महिन्याच्या आत मंडळाकडे जमा करणे अनिवार्य राहील.

मंडळाने विनिर्दिष्ट केलेल्या कालमर्यादेत लेव्हीची रक्कम भरण्यात जे नियोक्ता अभिकरण सातत्याने कसूर करील ते नियोक्ता अभिकरण मंडळाने भरणा करण्यास निर्धारित केलेल्या रकमेच्या १० टक्केहून अधिक असणार नाही इतका अधिभार दंडाच्या रुपाने मंडळाकडे भरील.

१९. मालक एजन्सीमार्फत सुरक्षा रक्षक नियुक्त करणाऱ्या मुख्य मालकाने करार संपुष्टात आल्यानंतर व इतर कोणत्याही कारणामुळे सुरक्षा रक्षकांची सेवा घेणे बंद केले असल्यास सेवा खंडीत केल्याच्या दिनांकापासून ७ दिवसांच्या आत अशा मुख्य मालकाची व तेथून कमी केलेल्या सुरक्षा रक्षकांची नावे व तपशील मालक एजन्सी मंडळास सादर करील. अशा मुख्य मालकाची अधिसूचनेनुसार घेतलेली मंडळातील नोंदणी रद्द होईल. तसेच मालक एजन्सीकडून नोकरी सोडून गेलेल्या सुरक्षा रक्षकांची नावे व तपशील मालक एजन्सी मंडळास व नजीकच्या पोलीस ठाण्यास ७ दिवसांच्या आत सादर करील. अशाप्रकारे नोकरी सोडून गेलेल्या सुरक्षा रक्षकांची नोंदणी मंडळ रद्द करील.

२०. मुख्य मालकाकडून सुरक्षा रक्षकांच्या कामाच्या मोबदल्यापोटी एजन्सीकडे जमा होणाऱ्या रकमेपैकी, मंडळाने सुरक्षा रक्षकांच्या वेतनापोटी निश्चित केलेली रक्कम तसेच सर्व वैधानिक रकमा जसे भविष्य निर्वाह निधी, कामगार राज्य विमा योजना, बोनस प्रदान, रजा वेतन, राष्ट्रीय सुट्ट्यांचे वेतन यासाठी विनियमित केले जाईल निदान इतकी रक्कम किंवा मुख्य मालकाने एजन्सीला अदा केलेल्या रकमेच्या ५६ टक्के इतकी रक्कम किंवा यापैकी जी अधिक असेल ती सुरक्षा रक्षक एजन्सीनी सुरक्षा रक्षकांना अदा करणे आवश्यक आहे.

२१. सुरक्षा रक्षकांना साप्ताहिक सुट्टी उपभोगण्याकरिता कार्यमुक्त करणाऱ्या सुरक्षा रक्षकांचे वेतन मुख्य मालक एजन्सीला अदा करील. हे वेतन यथा प्रमाण पद्धतीवर आधारित असेल व ही रक्कम मूळ वेतनाच्या १०% अथवा जी अधिक असेल इतकी असेल.

२२. सुरक्षा रक्षक मंडळामध्ये जमा करावयाची लेव्ही, सुरक्षा रक्षकांच्या प्रशिक्षणासाठीचा खर्च, देखरेखीवरील खर्च, तसेच एजन्सीचा प्रशासकीय खर्च व नफा या सर्व गोष्टींचा खर्च हा मुख्य मालकाने एजन्सीकडे जमा केलेल्या एकूण रकमेच्या ३०% रकमेपेक्षा जास्त नसावा.

२३. उपरोक्त अनिवार्य लादलेल्या खर्चावर नियमानुसार सेवाकर आकारला जाईल व सेवाकर त्या त्या वेळी अंमलात असलेल्या दरानुसार असेल.

२४. या व्यतिरिक्त सुरक्षा रक्षकांना गणवेश दिला जाईल व त्यासाठी ४% रक्कम दरवर्षी राखीव ठेवण्यात येईल.

२५. सुरक्षा रक्षकांना त्यांचे वेतन पुढील महिन्याच्या सात तारखेपर्यंत देण्यात यावे.

वरीलपैकी कोणत्याही शर्तींचे मालक एजन्सीने उल्लंघन केल्यास त्यांना देण्यात आलेली सूट रद्द करण्यात येईल किंवा काढून टाकण्यात येईल.

अटी, शर्ती व नियमांचे तंतोतंत पालन होण्याबाबतची जबाबदारी मुख्य मालकाची असेल. अधिसूचनेतील तरतुदीनुसार सुरक्षा रक्षकांना एजन्सीने फायदे दिले नसल्यास सूट प्राप्त सुरक्षा रक्षकांना सदर फायदे देण्याची जबाबदारी मुख्य मालकाची असेल.

नमुना " अ "

सुरक्षा रक्षक एजन्सीने सादर करावयाचे त्रैमासिक विवरणपत्र

विवरणपत्राचा कालावधी : (जानेवारी-मार्च/एप्रिल-जून/जुलै-सप्टेंबर/ऑक्टोबर-डिसेंबर) दिनांक :

एजन्सीचे नाव व पत्ता :

अधिसूचना क्रमांक व दिनांक :

एजन्सीचा मंडळातील नोंदणी क्रमांक :

अनु- क्रमांक (१)	मुख्य मालकाचे नाव व पत्ता (२)	सुरक्षा रक्षकांच्या नियुक्तीचे ठिकाण (३)	सुरक्षा रक्षकांचे नाव व वर्ग (४)

प्राधिकृत स्वाक्षरीकर्ता,

(नाव व हुद्दा).

नमुना " ब "

सुरक्षा रक्षक एजन्सीने सादर करावयाचे सहामाही विवरणपत्र

विवरणपत्राचा कालावधी : (जानेवारी ते जून/जुलै ते डिसेंबर) दिनांक :

एजन्सीचे नाव व पत्ता :

अधिसूचना क्रमांक व दिनांक :

एजन्सीचा मंडळातील नोंदणी क्रमांक :

अनुक्रमांक	मुख्य मालकाचे नाव व पत्ता	नियुक्त केलेल्या सुरक्षा रक्षकांची वर्गनिहाय एकूण संख्या	सुरक्षा रक्षक एजन्सी सोडून गेलेल्या सुरक्षा रक्षकांची वर्गनिहाय संख्या	नव्याने भरती झालेल्या सुरक्षा रक्षकांची वर्गनिहाय संख्या
(१)	(२)	(३)	(४)	(५)

प्राधिकृत स्वाक्षरीकर्ता,

(नाव व हुद्दा).

नमुना " क "

एजन्सीने वेतन प्रदानाबाबत सुरक्षा रक्षक मंडळास सादर करावयाचे विवरणपत्र

वेतन प्रदानाचा महिना : दिनांक :

मुख्य मालकाचे नाव व पत्ता :

बँकेचे नाव (शाखा व पत्ता) :

अनु-क्रमांक	सुरक्षा रक्षकाचे नाव	धनादेश क्रमांक व दिनांक	रक्कम
(१)	(२)	(३)	(४)

प्राधिकृत स्वाक्षरीकर्ता,

(नाव व हुद्दा).

नमुना " ड "

सुरक्षा रक्षक एजन्सीने सादर करावयाचे वार्षिक विवरणपत्र

वार्षिक विवरणपत्राचे आर्थिक वर्ष : दिनांक :

एजन्सीचे नाव व पत्ता :

अधिसूचना क्रमांक व दिनांक :

एजन्सीचा मंडळातील नोंदणी क्रमांक :

अनु-क्रमांक	महिने (एप्रिल ते मार्च)	नियुक्त केलेल्या सुरक्षा रक्षकांची संख्या	सुरक्षा रक्षकांना अदा केलेले एकूण वेतन	भविष्य निर्वाह निधी ज्यावर कपात केली आहे असे वेतन	मंडळाकडे जमा केलेली ३ टक्के लेव्ही रक्कम
(१)	(२)	(३)	(४)	(५)	(६)

प्राधिकृत स्वाक्षरीकर्ता,

(नाव व हुद्दा).

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सं. धों. डगळे,

कार्यासन अधिकारी, महाराष्ट्र शासन.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. SGA. 2014/CR-1/LAB-2, dated the 23rd May 2014 is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

A. G. ASWALE,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Hutatma Rajguru Chowk, Madam Cama Road,
Mantralaya, Mumbai 400 032, dated the 23rd May 2014.

NOTIFICATION

MAHARASHTRA PRIVATE SECURITY GUARDS (REGULATION OF EMPLOYMENT AND WELFARE) ACT, 1981.

No. SGA.2014/C.R.-1/LAB-2.— Whereas certain Security Gaurds whose names are mentioned in Column (2) of Schedule I appended hereto (hereinafter referred to as "the said Security Guards"), employed with the Principal Employer mentioned in Column (4) of the said Schedule I, employed by M/s. Aurgngabad Multi Services, 101,102, Akshaydeep Plaza, Near CIDCO Bus Stand, Aurangabad-431 003 (Aurangabad Dist.) and Owner Shri Subhash Dadarao Shinde have applied for grant of exemption under Section 23 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (Mah. LVIII of 1981) from the operation of all provisions of the said Act and the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002 (hereinafter referred to as "the said Scheme") ;

And whereas, the Government of Maharashtra, after consultation with the Advisory Committee and after verification of the benefits enjoyed by the said Security Guards is of the opinion that they are in enjoyment of benefits, which are on the whole not less favourable to them than the benefits provided by and under the said Act and the said Scheme ;

Now, therefore, in exercise of powers conferred by Section 23 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, the Government of Maharashtra hereby exempts the said Security Guards from operations of all provisions of the said Act and the said Scheme, for a period of three years from the date of publication of this notification in *Official Gazette,* subject to conditions specified in Schedule II appended hereto :—

Schedule I

Sr. No. (1)	Name of Security Guards (2)	Class (3)	Name and address of Principal Employer (4)
1	Mahendrasingh Ramrao Ingale	Security Guard	M/s. Sanya Motars Pvt.Ltd., Chikhalthana, Aurangabad.
2	Manoj Bhanudas Kardile	Security Guard	—,,—
3	Sanjay Vidyadhar Deshmukh	Security Guard	—,,—
4	Bhimrao Kashinath Bhimsen	Security Guard	—,,—
5	Radhakrishna Dashrath Jadhav	Security Guard	—,,—
6	Narayan Atmaram Ingale	Security Guard	—,,—
7	Dnyaneshwar Eknath Kalamkar	Security Guard	M/s. Sanya Motars Pvt.Ltd., Walunj, Aurangabad.
8	Atmaram Vamanrao Pradhan	Security Guard	—,,—
9	Dhananjay Vasantrao Gavali	Security Guard	—,,—
10	Dilip Lakshman Jadhav	Security Guard	—,,—
11	Rajendra Shankar Patil	Security Guard	—,,—
12	Gajanan Sakharam Panchal	Security Guard	—,,—
13	Shivaji Tulashiram Najan	Security Guard	—,,—
14	Shridhar Narayan Wagh	Security Guard	—,,—
15	Krushna Macchindra Thote	Security Guard	—,,—

Schedule I—Contd.

(1)	(2)	(3)	(4)
16	Pralhad Nanabhau Nivare	Security Guard	M/s. Fores Engineering (I) Ltd., MIDC, Paithan, Aurangabad.
17	Sanjay Uttamrao Pawar	Security Guard	—,,—
18	Sanjay Harakasingh Rai	Security Guard	—,,—
19	Vijay Namdev Nil	Security Guard	—,,—
20	Babasaheb Bhau Ghule	Security Guard	—,,—
21	Digambar Gangadhar Ingale	Security Guard	—,,—
22	Sadashiv Ramchandra Kulkarani	Security Guard	—,,—
23	Pralhad Keshavrao Zirape	Security Guard	—,,—
24	Baban Ganaptrao Manchare	Security Guard	—,,—
25	Kashinath Vittalrao Shelake	Security Guard	—,,—
26	Sheshrao Pralhad Takras	Security Guard	M/s. Lakshmi Agni Compo. and Forging Pvt.Ltd., Aurangabad.
27	Suresh Vishwanath Kolte	Security Guard	—,,—
28	Lakshman Bhaika Sapkale	Security Guard	—,,—
29	Subhash Kacharu Dandge	Security Guard	—,,—
30	Pujaram Vitthal Pote	Security Guard	—,,—
31	Ramesh Kisanrao Hingmare	Security Guard	—,,—
32	Keshav Subhashrao Jadhav	Security Guard	—,,—
33	Anirudha Yadavrao Gade	Security Guard	—,,—
34	Sainath Dadarao Ghuge	Security Guard	—,,—
35	Praful Vinaykrao Chavan	Security Guard	—,,—
36	Sadanand Bhimrao Jamdhade	Security Guard	—,,—
37	Nandkishor Gorakhsingh Solunke	Security Guard	—,,—
38	Ambadas Prabhaks Pathak	Security Guard	—,,—
39	Ashok Harsingh Solunke	Security Guard	—,,—
40	Annasaheb Bhagaji Sonavane	Security Guard	—,,—
41	Gajanan Umashankar Mitkari	Security Guard	M/s. Birla Pricision Tehnology Ltd., Indian Tools Divisior Walunj, Aurangabad.
42	Raju Gangadhar Panchal	Security Guard	—,,—
43	Bhagavan Atmaram Salave	Security Guard	—,,—
44	Rajendra Himmatrao Deshmukh	Security Guard	—,,—
45	Sanjay Keshavrao Tarafdar	Security Guard	—,,—
46	Parameshwar Sakhram Pawar	Security Guard	—,,—
47	Hari Narayan Bhutekar	Security Guard	—,,—
48	Harichandra Asaram Vahule	Security Guard	M/s. Birla Pricision Tehnology Ltd., Faundri Division, Aurangabad.
49	Nanasaheb Darmaraj Ubale	Security Guard	—,,—
50	Prabhakar Narayan Khadekar	Security Guard	—,,—
51	Mahananda Dagadu Barge	Security Guard	—,,—
52	Sahebrao Ramchandra Khotkar	Security Guard	—,,—
53	Sambhaji Najukrao Jadhav	Security Guard	—,,—

Schedule I—Concld.

(1)	(2)	(3)	(4)
54	Kisan Annarao Pathade	Security Guard	M/s. Clear Mypac Pckedging Solutions Ltd., Shendra Aurangabad.
55	Sadashiv Sitaram Dhage	Security Guard	—,,—
56	Raosaheb Chokhaji Salave	Security Guard	—,,—
57	Manoher Sominath Matte	Security Guard	—,,—
58	Alka Zanak Kharat	Security Guard	—,,—
59	Gautam Baburao Dhage	Security Guard	—,,—
60	Gopichnd Kisanrao Kharade	Security Guard	—,,—

Note.—Government of Maharashtra does not take guarantee of any sort as regards to Security Guards. Principal Employers can employ these Private Security Guards at their own risk.

Schedule II

Conditions to be followed by the Employer Agency and Principal Employer

1. *Police Verification.*—Police Verification Certificates regarding antecedent of the guards as well as the employer of such guard is necessary. Licence under the Private Security Agency (Regulation) Act, 2005 is also compulsory on the part of Employer Agency.

2. *Training*.—Adequate training shall be imparted to the Security Guards before they are deployed.

3. *Educational Qualifications, Physical Fitness and other requirements.*—Educational, physical and other requirements for the Security Guards shall be as follows :—

Minimum Education Qualification - 8th Standard Passed.

Physical Requirements (A) (1) Height — 162 cm.

(2) Weight — 50 kg.

(3) Chest — 79 cm. (Without Expansion) and 84 cm. (On Expansion)

(4) Sight — If wearing glasses, the glass should not have excess number.

(B) In case of tribal candidates, there will relaxation of 5 c.m. in height and 2 c.m. in chest.

4. *Benefits.*—Benefits for Security Guards shall be as follows :—

(*a*) *Uniform :* Two pairs in a year.

(*b*) *Shoes :* One pair of leather shoes in a year.

(*c*) *Rainy and Winter Uniform* **:** (Once in two years) Raincoat, Trousers and Cap, Woollen Coat and Pant.

5. *Wages and other statutory Benefits.*—Exempted Security Guard shall open his account in a Nationalised Bank and agency shall give crossed cheque to each Security Guard equivalent to his earned wages by 7th of every month. Statement showing details of wages paid in Form "C" shall be submitted to the Security Guards Board by 10th of every month.

The Agency shall give the following benefits to the Security Guards :—

Ex-Gratia	:	10% of wages
Gratuity	:	4% of wages
Leave with wages	:	6% of wages
Paid Holidays	:	1% of wages.

Contribution to be deposited with the Competent Authorities in respect of various statues such as Provident Fund, E.S.I. etc. applicable to the Principal Employer, shall be deposited by the Agency with such authority and challan thereof be submitted to the Board for information. The Security Guards Agency should give regular receipt to the Guard and submit a consolidated report of the abovesaid transactions to the Government, the Commissioner of Labour and the Security Guards Board every six months. In case of default, the Agency shall be held responsible and shall be liable for cancellation of exemption.

6. *Overtime Allowance.*—Overtime Allowance should not be less than double the rates of wages existing at that time on the anology of the Security Guards deployed by the Security Guards Board. The ultimate responsibility in this respect lies on the concerned Principal Employer.

It is the responsibility of the Principal Employer to pay wages and provide benefits to the Security Guards. The Principal Employer, in turn, shall ensure that the guards deployed at his establishment are getting wages and benefits not less favourable than those available under the Scheme.

7. *Filling of Returns*—(*a*) *Quarterly Return.*—Agency to submit quarterly return to the Government, the Commissioner of Labour and Board in the first week of first month of the quarter (January, April, July and October) in respect of employment of Security Guards in Form "A" appended hereto.

(*b*) *Half Yearly Return.*—(1) Half Yearly Return in Form "B" appended hereto shall be submitted by the Agency in respect of Guards engaged, who have left and newly recruited to the Government, the Commissioner of Labour and Board.

(2) The Security Guard Agency should make regular contribution of employees' Provident Fund and ESIC of the concerned Security Guards and give regular Receipts to the guard and submit a consolidated report of the above said transaction to the Government, the Commissioner of Labour and the Security Guards Board every six months.

(3) The Security Guard Agency should submit proof of the previous contributions of employees' Provident Fund and ESIC within a period of three months from the date of publication of this Notification to the Government. Otherwise, the exemption given to the concerned Security Guards will be cancelled.

(*c*) *Annual Return*.—Every Agency shall submit at Annual Return of Income Tax, P.F., E.S.I. duly certified by Chartered Accountant, in Form-D on or before 30th of June of every year to the Government and the Board, along with copies of challans and other details.

8. *Enrollment of the Agency with the Board.*—The Agency should get itself enroll with the Board according to the provisions of Clause 13(*2*) of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002, as an employer agency and shall register exempted Security Guards under Clause 14(*3*) of the Scheme applying in the Form devised by the Board by paying prescribed registration fee within a period of one month from the date of issuance of this Notification.

9. *Registration of Principal Employer of Employer Agency.*—The Principal Employer who is engaging exempted Security Guards of the agency shall get register with the Board as provided under Clause 13(*1*)(*a*) of the Scheme within 15 days from date of exempted Notification, applying in the Form devised by the Board by paying prescribed registration fee.

10. *Enrollment fees.*—While getting itself registered with the Board, the Agency should pay Registration Fee to the Board as per clause 17 of Maharashtra Private Security Guards (Regulation of Employment and Welfare), Scheme 2002 within stipulated time.

11. *Registered Office.*—Every Agency shall have registered office which shall be notified to the Government, Commissioner of Labour and the Board. In case of change in address or change in name, the same shall be informed to the Government and to the Board alongwith documentary proof thereof within a period of 15 days from such change, so as to Government can issue Notification in respect thereof. Board shall take note of such changes after issuance of the Notification.

12. *Allotment of Guards.*—The Agency shall not allot their Security Guards to such Principal Employers who are registered with the Board. If agency deployes its Security Guards to such Principal Employer in that case exemption will be cancelled.

13. *Issue of Identity Cards/Attendance Card.*—Every Agency shall issue identity card, attendance card to Security Guards and Officers engaged and deployed by them.

14. *Payment of Legal Dues.*—Whenever a Security Guard leaves his job, it is obligatory on the part of the agency to pay all the legal dues to him and copy of the records thereof shall be submitted to the Board including gratuity and other legal dues.

15. *Employment with one principal Employer at a time.*—Every Agency shall also ensure that its Security Guards shall not work for more than one Principal Employer at a time.

16. If any Security Guard is asked to work beyond the radius of 50 kms. from his place of residence, the Employer Agency shall pay an allowance @ 20% of total emoluments of such Security Guard.

17. The Agency and Principal Employer is liable to abide with any other terms and conditions, which may be imposed in favour of Security Guard by the Government of Maharashtra or Board in future.

18. The exempted Security Guard Agency should pay levy @ 3% to the Board per month on wages paid to the Security Guards on or before 10th of every month. The agency should start paying such levy within the period of 1 month from the date of exemption Notification.

The employer agency who persistantly makes default in remitting the amount of 3% levy within the time limit specified as above, shall further pay by way of penalty, surcharge @ 10% of the amount to be remitted.

19. In case, the Principal Employer discontinues the exempted Security Guards due to expiry of agreement or due to any reason, in that case, the agency shall submit the details of such Principal Employers and the Security Guards to the Board within 7 days from such discontinuation. In such case the registration of the said Principal Employer shall stand cancelled. The agency shall also submit the details of Security Guards who have left the services due to any reason alongwith details of the Principal Employers to the Board and concerned Police Station within 7 (Seven) days. On receipt of the above details Board will cancel the registration of such exempted guards.

20. From the amount of the payment made by the Principal Employer to the Security Agency, the Security Guards will be paid at least an amount which has been fixed by the Board towards the wages and all the statutory benefits towards Provident Fund, E.S.I.C., Payment of Bonus, leave with wages, leave on national holidays etc. or the same shall be the amount equivalent to 56% of the gross payment made by the Principal Employer to the Security Agency, whichever is higher.

21. The Principal Employer will pay to the agency on a prorata basis for the reliever who would be relieving the Security Guard in case of his weekly off or the amount paid to the reliever shall be 10% of the basic wages, or whichever is higher.

22. The amounts of levy to be deposited to the Security Guards Board, the cost of training of the Security Guards, the cost of supervision, administration of profits of the agency the total cost of which will not exceed more than 30% of the total amount paid by the Principal Employer to the agency.

23. The Service Tax will be levied on the total mandatory cost mentioned herein above at the rate which is in force at any given point of time.

24. In addition to this uniform will be provided to the Security Guards. For this purpose an amount of 4% per annum should be delineate.

25. Wages of the Security Guards will be paid not later than 7th of every next month.

Breach of any of above conditions by the employer agency shall make employer agency liable for cancellation or revocation of the exemption granted under this notification.

It shall be the responsibility of the Principal Employer to see that the terms, conditions and rules are followed scrupulously and in case the agency fails to grant the benefits to the exempted Security Guards as per the conditions of Notification the Principal Employer will be held responsible to pay the same to the exempted Security Guards.

FORM ' A '

Quarterly Return to be filed by the Agency

Quarterly Return for the months Date :

(January-March

April-June

July-September

October-December) :

Name and Address of the Agency :

Notification No. and Date :

Registration No. of Agency with the Board :

Serial Number	Number and Address of the Principal Employer	Location of Security Guards deployed	Name and Category of the Guards
(1)	(2)	(3)	(4)

Authorised Signatory,

(Name and Designation).

FORM ' B '

Half Yearly Return to be submitted by Security Guards Agency

Period of Return : January to June/ Date :
July to December

Name and Address of the Agency :

Notification No. and Date :

Registration No. of Agency with the Board :

Serial No.	Name and Address of Principal Employer.	Total No. of Security Guards engaged Categorywise.	No. of Security Guards who have left the Security Guards Agency Categorywise.	Number of Security Guards Newly Recruited Categorywise
(1)	(2)	(3)	(4)	(5)

Authorised Signatory,

(Name and Designation).

FORM ' C '

Statement to be submitted to the Security Guards Board regarding disbursement of wages.

Disbursement of wages for the month of :

Name and Address of the Principal Employer :

Name of the Bank (Branch and Address) :

Serial No.	Name of the Security Guard	No. and Date of the Cheque	Amount
(1)	(2)	(3)	(4)

Authorised Signatory,

(Name and Designation).

FORM ' D '

Annual Return to be submitted by Security Guards Agency

Period of Annual Return : Date :

Name and Address of the Agency :

Notification No. and Date :

Registration No. of Agency with the Board :

Serial No.	Months (April to March)	Total No. of Security Guards engaged	Total Wages Paid to the Security Guard.	The Wages on which the P.F. Contribution is deducted.	3% Levy Submitted to Board.
(1)	(2)	(3)	(4)	(5)	(6)

Authorised Signatory,

(Name and Designation).

By order and in the name of the Governor of Maharashtra,

S. D. DAGALE,

Section Officer.

१३०

सोमवार, मे २६, २०१४/ज्येष्ठ ५, शके १९३६

उद्योग, ऊर्जा व कामगार विभाग

मंत्रालय विस्तार, हुतात्मा राजगुरु चौक, मादाम कामा रोड,
मुंबई ४०० ०३२, दिनांक २६ मे २०१४.

अधिसूचना

कर्मचारी भविष्य निर्वाह निधी योजना, १९५२.

क्रमांक इपीएफ. २०१२/प्र.क्र. ५८/कामगार-४.— ज्या अर्थी, कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२ च्या कलम २७(ए) खाली ज्यांनी सूट मिळण्यासाठी अर्ज केला आहे त्या मे. तोलानी एज्युकेशन फाऊंडेशन, १०-ए, बख्तावर, नरीमन पॉईंट, मुंबई ४०० ०२१ (यात यापुढे जिचा उक्त आस्थापना असा निर्देश करण्यात आला आहे) ज्यांना महाराष्ट्र शासन याद्वारे सूट देत आहे.

आणि ज्याअर्थी, केंद्र शासनाच्या मते, उक्त आस्थापनेतील कर्मचाऱ्यांच्या अंशदानाच्या दरांच्या बाबतीत, भविष्य निर्वाह निधीचे नियम हे, उक्त अधिनियमाच्या कलम ६ मध्ये विर्निदिष्ट केलेल्या दरांपेक्षा कमी अनुकूल नाहीत आणि कर्मचाऱ्यांना भविष्य निर्वाह निधीचे अन्य लाभही तशाच स्वरूपाच्या अन्य कोणत्याही आस्थापनेतील कर्मचाऱ्यांच्या संबंधात, उक्त अधिनियमाखाली किंवा कर्मचारी भविष्य निर्वाह निधी योजना, १९५२ (यात यापुढे जिचा निर्देश उक्त योजना असा करण्यात आला आहे), याखाली त्या कर्मचाऱ्यांना मिळत असलेल्या लाभांपेक्षा एकंदरीत कमी अनुकूल नाहीत ;

त्याअर्थी, आता, कर्मचारी भविष्य निर्वाह निधी योजना, १९५२ च्या कलम २७(ए) द्वारे प्रदान करण्यात आलेल्या अधिकारांचा वापर करून, आणि यासोबत जोडलेल्या अनुसूचीमध्ये विनिर्दिष्ट केलेल्या शर्तींच्या अधीनतेने, राज्य शासन, याद्वारे, उक्त आस्थापनेस फक्त अधिकारी वर्गाबाबत उक्त योजनेच्या सर्व तरतुदींचे प्रवर्तन करण्यातून दिनांक १ फेब्रुवारी २००९ पासून पूर्वलक्षी प्रभावाने सूट देत आहे.

अनुसूची

(१) उक्त आस्थापनेच्या संबंधातील नियोक्ता महिन्या अखेरीपासून पंधरा दिवसांच्या आत, उक्त अधिनियमांच्या कलम १७, पोट-कलम (३) खंड (क) अन्वये, केंद्र शासन, वेळोवेळी निदेश देईल, त्याप्रमाणे तपासणी करण्याची सुविधा उपलब्ध करून देण्याची आणि तपासणी खर्च देण्याची तरतूद करील.

(२) या आस्थापनेच्या भविष्य निर्वाह निधीनियमांखाली देय असलेला अंशदानाचा दर हा, सूट देण्यात न आलेल्या आस्थापनांच्या बाबतीत उक्त अधिनियमांन्वये आणि त्याखाली तयार करण्यात आलेल्या उक्त योजनेन्वये कोणत्याही परिस्थितीत कमी असणार नाही.

(३) आगाऊ रकमांच्या बाबतीत, सूट देण्यात आलेल्या आस्थापनेची योजना ही, कर्मचारी भविष्य निर्वाह निधी योजना, १९५२ पेक्षा कमी अनुकूल असणार नाही.

(४) उक्त योजनेतील कोणतीही सुधारणा ही, आस्थापनेच्या विद्यमान नियमांपेक्षा कर्मचाऱ्यांना अधिक लाभप्रद असल्यास, ती आपोआप लागू करण्यात येईल. उक्त आस्थापनेच्या भविष्य निर्वाह निधी नियमांतील कोणतीही सुधारणा ही, प्रादेशिक भविष्य निर्वाह निधी आयुक्तांच्या पूर्वमान्यतेशिवाय केली जाणार नाही आणि कोणत्याही सुधारणेमुळे उक्त आस्थापनेतील कर्मचाऱ्यांच्या हितास बाधा पोहोचण्याचा संभव असल्यास, प्रादेशिक भविष्य निर्वाह निधी आयुक्त मान्यता देण्यापूर्वी, कर्मचाऱ्यांस त्यांची बाजू स्पष्ट करण्याची वाजवी संधी देईल.

(५) उक्त आस्थापनेत सूट देण्यात आली नसती तर [उक्त अधिनियमाच्या कलम २(च) मध्ये व्याख्या केल्याप्रमाणे] भविष्य निर्वाह निधीचे सदस्य होण्यास पात्र ठरले असते. त्या सर्व कर्मचाऱ्यांची सदस्य म्हणून नोंदणी करण्यात येईल.

(६) कर्मचारी अगोदरच, कर्मचारी भविष्य निर्वाह निधी (सांविधिक) किंवा अन्य कोणत्याही सूट देण्यात आलेल्या आस्थापनेच्या भविष्य निर्वाह निधीचा सदस्य असल्यास, सेवा नियोक्ता, निधीचा सदस्य म्हणून लगेचच त्याचे नाव नोंदवील आणि अशा कर्मचाऱ्यांच्या पूर्वीच्या नियोक्त्याकडील त्याच्या भविष्य निर्वाह लेख्यातील संचयित रक्कम हस्तांतरित करण्याची आणि ती रक्कम त्याच्या खात्यात जमा करण्याची व्यवस्था करील.

(७) नियोक्ता, केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा यथास्थित, केंद्र शासन, वेळोवेळी, देऊ शकेल अशा निर्देशांनुसार भविष्य निर्वाह निधीच्या व्यवस्थापनासाठी विश्वस्त मंडळाची स्थापना करील.

(८) भविष्य निर्वाह निधी विश्वस्त मंडळाकडे विहित असेल व कर्मचारी भविष्य निर्वाह निधीच्या संघटनासाठी त्याबरोबरच भविष्य निर्वाह निधीत जमा होणारी रक्कम आणि भविष्य निर्वाह निधीतून केलेली प्रदाने आणि त्याच्या अभिरक्षेतील शिल्लक रकमा यांचा योग्य जमा खर्च ठेवण्यासाठी जबाबदार असेल आणि त्यासाठी उत्तरदायी असेल.

(९) प्रत्येक तीन महिन्यांतून किमान एकदा विश्वस्त मंडळाची बैठक बोलावण्यात येईल आणि केंद्र शासन/केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा त्याने प्राधिकृत केलेला अधिकारी यांनी जारी केलेल्या मार्गदर्शक तत्त्वांनुसार त्याचे काम चालेल.

(१०) विश्वस्त मंडळाने ठेवलेल्या भविष्य निर्वाह निधीचे लेखे, दरवर्षी, अर्हताप्राप्त स्वतंत्र सनदी लेखापालाकडून लेखापरीक्षा केली जाण्यास अधीन असतील, केंद्रीय भविष्य निर्वाह निधी आयुक्तास आवश्यक वाटेल तेव्हा लेख्यांची अन्य कोणत्याही अर्हताप्राप्त लेखा परीक्षकांकडून पुन्हा लेखापरीक्षा करवून घेण्याचा अधिकारी असेल आणि त्यासाठी करण्यात आलेला खर्च नियोक्त्याकडून उचलला जाईल.

(११) वित्तीय वर्षाच्या समाप्तीनंतर सहा महिन्यांच्या आत, प्रत्येक लेखावर्षातील लेखापरीक्षेत वार्षिक भविष्य निर्वाह निधी लेख्यांची एक प्रत आस्थापनेच्या लेखापरीक्षित ताळेबंदासह, प्रादेशिक भविष्यनिर्वाह निधी आयुक्ताकडे सादर करण्यात येईल. या प्रयोजनार्थ, भविष्य निर्वाह निधीचे वित्तीय वर्ष १ एप्रिल ते ३१ मार्च असे असेल.

(१२) नियोक्ता त्याच्याकडून आणि कर्मचाऱ्याकडून देय असलेले भविष्य निर्वाह निधीचे अंशदान, ज्या महिन्याचे अंशदान देय असेल त्यापुढील प्रत्येक महिन्याच्या १५ तारखेपर्यंत विश्वस्त मंडळाकडे हस्तांतरित करील. अंशदान भरण्यास कोणताही विलंब झाल्यास नियोक्ता तशाच प्रकारच्या परिस्थितीमध्ये सूट न मिळालेली आस्थापना ज्या रितीने हानीची रक्कम भरण्यास पात्र असते, त्याच रितीने विश्वस्त मंडळाकडे हानीची रक्कम भरण्यास पात्र असेल.

(१३) शासनाकडून वेळोवेळी देण्यात आलेल्या निर्देशांनुसार, विश्वस्त मंडळ, निधीमधील पैशांची गुंतवणूक करील. विश्वस्त मंडळाच्या नावाने रोखे काढण्यात येतील आणि ते भारतीय रिझर्व्ह बँकेच्या पतनियंत्रणाखालील अनुसूचित बँकांच्या अभिरक्षेत ते ठेवण्यात येतील.

(१४) शासनाच्या निदेशानुसार गुंतवणूक करण्यात कसूर केल्यास, विश्वस्त मंडळ, केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा त्यांचा प्रतिनिधी यांच्याकडून पृथकपणे आणि संयुक्तपणे अधिभार लादला जाण्यास पात्र ठरेल.

(१५) विश्वस्त मंडळ लिखित नोंदवही ठेवील आणि व्याजाची वसुली व पूर्वीचे विमोचन वेळेवर होत असल्याची खातरजमा करील.

(१६) विश्वस्त मंडळ प्रत्येक कर्मचाऱ्यांच्या बाबतीत, त्यांनी जमा केलेले अंशदान आणि त्यातून काढलेल्या रकमा व व्याज दर्शविणारे तपशिलवार लेखे ठेवील.

(१७) मंडळ, वित्तीय लेखांकन वर्षाच्या समाप्तीपासून सहा महिन्यांच्या आत, प्रत्येक कर्मचाऱ्यास, वार्षिक लेखा विवरणपत्र देईल.

(१८) मंडळाला, प्रत्येक कर्मचाऱ्यास वार्षिक लेखा विवरणपत्राऐवजी पासबुक देता येईल. ही पासबुके कर्मचाऱ्यांच्या ताब्यात असतील आणि कर्मचाऱ्याने ती सादर केल्यानंतर, मंडळ ती अद्ययावत भरून देईल.

(१९) प्रत्येक कर्मचाऱ्याच्या खात्यामध्ये, लेखांकन वर्षाच्या पहिल्या दिवशीच्या प्रारंभिक शिल्लक रकमेवर विश्वस्त मंडळ ठरवील अशा दराने काढण्यात आलेले व्याज जमा करण्यात येईल. मात्र हा दर, उक्त योजनेच्या परिच्छेद ६० खाली केंद्र शासनाने जाहीर केलेल्या दरापेक्षा कमी असणार नाही.

(२०) गुंतवणुकीवरील प्राप्ती कमी झाल्यामुळे किंवा अन्य कोणत्याही कारणामुळे केंद्र शासनाने जाहीर केलेल्या दराने व्याज देण्यास विश्वस्त मंडळ असमर्थ असल्यास, ही कमतरता नियोक्ता भरून काढील.

(२१) नियोक्ता चोरी, घरफोडी, अफरातफर, दुर्विनियोग किंवा अन्य कोणतेही कारण यांमुळे भविष्य निर्वाह निधीची झालेली कोणतीही हानी भरून काढील.

(२२) केंद्र शासन/केंद्रीय भविष्य निर्वाह निधी आयुक्त वेळोवेळी विहित करील अशी विवरणपत्रे नियोक्ता तसेच विश्वस्त मंडळ प्रादेशिक भविष्य निर्वाह निधी आयुक्तांकडे सादर करील.

(२३) योजनेच्या परिच्छेद ६९ च्या आधारे, कर्मचारी निधीचा सदस्य असणे बंद होईल त्याबाबतीत, नियोक्त्यांचे अंशदान समपहृत करण्याची तरतूद आस्थापनेच्या भविष्य निर्वाह निधी नियमांमध्ये करण्यात आली असल्यास, विश्वस्त मंडळ अशा समपहृत रकमेचा हिशेब स्वतंत्रपणे ठेवील आणि केंद्रीय भविष्य निर्वाह निधी आयुक्तांची पूर्वमान्यता घेऊन तो निर्धारित करील अशा प्रयोजनांसाठी तो उपयोगात आणील.

(२४) आस्थापनेच्या भविष्य निर्वाह निधी नियमांमध्ये काहीही अंतर्भूत असले तरी, आस्थापनेचा कर्मचारी असण्याचे बंद झाल्यामुळे कोणत्याही सदस्यास, कर्मचारी व नियोक्ता यांचे अंशदान अधिक त्यावरील व्याजासह, उपदान किंवा निवृत्तिवेतन नियम यांखाली देय असलेली कोणतीही रक्कम ही, तो जर, उक्त योजनेखाली भविष्य निर्वाह निधीचा सदस्य असता तर त्याला कर्मचारी व नियोक्त्याचे अंशदान अधिक त्यावरील व्याज या पोटी जितकी रक्कम देय झाली असती त्या रकमेपेक्षा कमी असल्यास, तिच्यातील तफावतीची रक्कम नुकसान भरपाई किंवा विशेष अंशदान म्हणून नियोक्ता भरील.

(२५) लेखे ठेवणे, विवरणपत्रे सादर करणे, संचित रक्कम हस्तांतरित करणे यांसह, भविष्य निर्वाह निधीचा व्यवहार चालविताना होणारे सर्व खर्च नियोक्ता करील.

(२६) नियोक्ता, समुचित प्राधिकाऱ्याने मान्यता दिलेल्या निधीच्या नियमांची एक प्रत आणि त्यात जसजशा सुधारणा करण्यात येतील त्या सुधारणा, जास्तीत जास्त कर्मचाऱ्यांना समजेल अशा भाषेमध्ये भाषांतरित केलेल्या त्यातील ठळक मुद्यांसह आस्थापनेच्या सूचना फलकावर लावील.

(२७) समुचित शासनास, आस्थापनेला देण्यात आलेली सूट चालू ठेवण्यासाठी आणखी कोणत्याही शर्ती घालता येतील.

(२८) नियोक्ता, ज्या आस्थापना वर्गात त्याची आस्थापना येते त्या वर्गासाठी असलेल्या भविष्यनिर्वाह निधीच्या अंशदानाच्या दरात उक्त अधिनियमांन्वये वाढ करण्यात आल्यास, भविष्यनिर्वाह निधीच्या अंशदानाच्या दरात योग्य ती वाढ करील, जेणेकरून उक्त अधिनियमांन्वये मिळणारे लाभ मिळू शकतील

(२९) वरीलपैकी कोणत्याही शर्तींचा भंग करण्यात आल्यास, देण्यात आलेली सूट रद्द केली जाण्यास पात्र असेल.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

रविकुमार पाटणकर,
कक्ष अधिकारी.

In pursuance of Clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. EPF. 2012/C.R. 58/LAB-4, dated the 26th May 2014 is hereby published under the authority of the Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya Annexe, Hutatma Rajguru Chowk, Madam Cama Road,
Mumbai 400 032, dated the 26th May 2014.

NOTIFICATION

EMPLOYEES' PROVIDENT FUNDS SCHEME, 1952.

No. EPF. 2012/C.R. 58/Lab-4.—The Government of Maharashtra is hereby exempts, M/s. Tolani Education Foundation, 10-A, Bakhtawar, Nariman Point, Mumbai 400 021 (hereinafter referred to as the said establishment), who has applied for exemption under clause 27(A) of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Act) ;

AND WHEREAS, in the opinion of the Central Government, the rules of the Provident Fund of the said establishment with respect to the rates of contribution are not less favourable to the employees therein that those specified in Section 6 of the said Act and the empoyees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Scheme) in relation to the employees in any other etablishment of a similar character ;

NOW THEREFORE in excercise of the powers conferred by clause 27(A) of the said scheme and subject to the conditions specified in the Schedule annexed hereto, the State Government hereby exempts only class of employees of the said establishment from the operation of all the provisions of the said scheme with effect from 1st February 2009.

Schedule

(1) The employer in relation to the said establishment shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under Clause (*a*) of sub-section (*3*) of section 17 of the said Act within 15 days from the close of every month.

(2) The rate of contribution payable under the provident fund rules of the establishment shall at no time be lower than those payable under the said Act in respect of the unexempted establishment and the said Scheme framed thereunder.

(3) In the matter of advance, the scheme of the exempted establishment shall not be less favourable than the Employees' Provident Fund Scheme, 1952.

(4) Any amendment to the said Scheme which is more beneficial to the employees than the existing rule of the establishment shall be made applicable to them automatically. No amendment to the rules of the Provident Fund of the said establishment shall be made without the previous approval of the Regional Provident Fund Commissioner and where any amendment is likely to affect adversely the interest of the employees of the said establishment, the Regional Provident Fund Commissioner shall before giving his approval, give a reasonable opportunity to the employees to explain their point of view.

(5) All employees [as defined in section 2(*f*) of the said Act] who would have been eligible to become members of the Provident Fund, had the establishment not been granted exemption shall be enrolled as members.

(6) Where an employee who is already a member of Emoloyees' Provident Fund (Statutory) or a Provident Fund of any other exempted establishment, the employer shall immediately enroll him as a member of the fund and arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited to his account.

(7) The employer shall establish a Board of Trustees for the management of the Provident Fund according to such directions as may he given by the Central Provident Fund Commissioner or by the Central Government, as the case may be from time to time.

(8) The Provident Fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees Provident Fund organization *inter-alia* for proper accounts of the receipts into and payments from the Provident Fund and the balance in their custody.

(9) The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/ Central Provident Fund Commissioner or an officer authorized by him.

(10) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary, the Central Provident Fund Commissioner shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(11) A copy of the audited annual Provident Fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of the financial year. For this purpose the financial year of the Provident Fund shall be from 1st of April to the 31st March.

(12) The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and the employees by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay Damages to the Board of Trustees for any delay in payment of the contributions in the same manner as an unexempted establishment is liable under similar circumstances.

(13) The Board of Trustees shall invest the money in the fund as per directions that may be given by the Government from time to time. The securities shall be obtained in the name of the Board of Trustees and shall be kept in the custody of a Scheduled Bank under the Credit Control of the Reserve Bank of India.

(14) Failure to make the investments as per directions of the Government shall make the Board of Trustees severally and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

(15) The Board of Trustees shall maintain a script-wise register and ensure timely realization of interest and redemption proceeds.

(16) The Board of Trustees shall maintain detailed accounts to show the contribution credited, withdrawal and interest in respect of each employee.

(17) The Board shall issue an annual statement of account to every employee within six months of the close of financial/accounting year.

(18) The Board may, instead of the annual statement of account issue passbooks to every employee. Those passbooks shall remain in the custody of the employees and shall be brought upto date, by the Board on presentation by the employees.

(19) The account of each employee shall be credited with interest calculated on the opening balance as on the 1st day of the accounting year at such rate as may be decided by the Board of Trustees but shall not be lower than the rate declared by the Central Government under para 60 of the said Scheme.

(20) If the Board of Trustees are unable to pay interest at the rate declared by the Central Government for the reason that the return on investment is less or for any other reason, than the deficiency shall be made good by the employer.

(21) The employer shall also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, mis-appropriation or any other reason.

(22) The employer as well as the Board of Trustees shall submit such returns to the Regional Provident Fund Commissioner as the Central Government/Central Provident Fund Commissioner may prescribe from time to time.

(23) If the Provident Fund rules of the establishment provide for forfeiture of the employers' contributions in cases where an employee ceases to be a member of the fund on the lines of para 69 of the Scheme, the Board of Trustees shall maintain a separate account of the amounts so forfeited and may utilise the same for such purpose as may be determined with the prior approval of the Central Provident Fund Commissioner.

(24) Notwithstanding anything contained in the rules of the Provident Fund of the establishment, if the amount payable to any member upon his ceasing to be an employee of the establishment by way of employer and employees' contribution plus interest thereon taken together with the amount, if any payable under the Gratuity or Pension rules be less than the amount that would he payable as employer's and employees' contributions plus interest thereon if he were a member of the Provident Fund under the said Scheme, the employer shall pay the difference to the member as compensation or special contribution.

(25) The employer shall bear all the expenses of the administration of the Provident Fund including the maintenance of accounts, submission of returns, transfer of accumulations.

(26) The employer shall display on notice board of the establishment, a copy of the rules of the fund as approved by the appropriate authority and as and when amended thereto alongwith a translation of the salient points thereof in the language of the majority of the employees.

(27) The "Appropriate Government" may lay down any further conditions for continued exemption of the establishment.

(28) The employer shall enhance the rate of Provident Fund contributions appropriately if the rate of Provident Fund conrtibution for the class of establishments in which his establishment falls is enhanced under the said Act so that the benefits provided under the said Act.

(29) The exemption is liable to be cancelled for violation of any of the above conditions.

By order and in the name of the Governor of Maharashtra,

RAVEEKUMAR PATANKAR,
Section Officer.

१३१

सोमवार, मे २६, २०१४/ज्येष्ठ ५, शके १९३६

उद्योग, ऊर्जा व कामगार विभाग

हुतात्मा राजगुरु चौक, मादाम कामा रोड,
मंत्रालय, मुंबई ४०० ०३२, दिनांक २६ मे २०१४.

अधिसूचना

कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२.

क्रमांक इपीएफ. २०१०/प्र.क्र. १५/कामगार-४.— ज्या अर्थी, कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२ च्या कलम २७(ए) खाली ज्यांनी सूट मिळण्यासाठी अर्ज केला आहे त्या मे. किर्लोस्कर एबरा पंप्स लि., प्राईड कुमार सिनेट बिल्डिंग, सेनापती बापट मार्ग, पुणे ४११ ०१६ (यात यापुढे जिचा उक्त आस्थापना असा निर्देश करण्यात आला आहे) ज्यांना महाराष्ट्र शासन याद्वारे सूट देत आहे.

आणि ज्याअर्थी, केंद्र शासनाच्या मते, उक्त आस्थापनेतील कर्मचाऱ्यांच्या अंशदानाच्या दरांच्या बाबतीत, भविष्यनिर्वाह निधीचे नियम हे, उक्त अधिनियमाच्या कलम ६ मध्ये विर्निदिष्ट केलेल्या दरांपेक्षा कमी अनुकूल नाहीत आणि कर्मचाऱ्यांना भविष्यनिर्वाह निधीचे अन्य लाभही तशाच स्वरूपाच्या अन्य कोणत्याही आस्थापनेतील कर्मचाऱ्यांच्या संबंधात, उक्त अधिनियमाखाली किंवा कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२ (यात यापुढे जिचा निर्देश उक्त योजना असा करण्यात आला आहे), याखाली त्या कर्मचाऱ्यांना मिळत असलेल्या लाभांपेक्षा एकंदरीत कमी अनुकूल नाहीत ;

त्याअर्थी आता, कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२ च्या कलम २७(ए) द्वारे प्रदान करण्यात आलेल्या अधिकारांचा वापर करून, आणि यासोबत जोडलेल्या अनुसूचीमध्ये विनिर्दिष्ट केलेल्या शर्तींच्या अधीनतेने, राज्य शासन, याद्वारे, उक्त आस्थापनेस फक्त अधिकारी वर्गाबाबत उक्त योजनेच्या सर्व तरतुदींचे प्रवर्तन करण्यातून दिनांक १ ऑक्टोबर १९९४ पासून पूर्वलक्षी प्रभावाने सूट देत आहे.

अनुसूची

(१) उक्त आस्थापनेच्या संबंधातील नियोक्ता महिन्या अखेरीपासून पंधरा दिवसांच्या आत, उक्त अधिनियमांच्या कलम १७, पोट-कलम (३) खंड (क) अन्वये, केंद्र शासन, वेळोवेळी निदेश देईल त्याप्रमाणे तपासणी करण्याची सुविधा उपलब्ध करून देण्याची आणि तपासणी खर्च देण्याची तरतूद करील.

(२) या आस्थापनेच्या भविष्यनिर्वाह निधीनियमांखाली देय असलेला अंशदानाचा दर हा, सूट देण्यात न आलेल्या आस्थापनांच्या बाबतीत उक्त अधिनियमांन्वये आणि त्याखाली तयार करण्यात आलेल्या उक्त योजनेन्वये कोणत्याही परिस्थितीत कमी असणार नाही.

(३) आगाऊ रकमांच्या बाबतीत, सूट देण्यात आलेल्या आस्थापनेची योजना ही, कर्मचारी भविष्यनिर्वाह निधी योजना, १९५२ पेक्षा कमी अनुकूल असणार नाही.

(४) उक्त योजनेतील कोणतीही सुधारणा ही, आस्थापनेच्या विद्यमान नियमांपेक्षा कर्मचाऱ्यांना अधिक लाभप्रद असल्यास, ती आपोआप लागू करण्यात येईल. उक्त आस्थापनेच्या भविष्यनिर्वाह निधी नियमांतील कोणतीही सुधारणा ही, प्रादेशिक भविष्यनिर्वाह निधी आयुक्तांच्या पूर्वमान्यतेशिवाय केली जाणार नाही आणि कोणत्याही सुधारणेमुळे उक्त आस्थापनेतील कर्मचाऱ्यांच्या हितास बाधा पोहोचण्याचा संभव असल्यास, प्रादेशिक भविष्यनिर्वाह निधी आयुक्त मान्यता देण्यापूर्वी, कर्मचाऱ्यांस त्यांची बाजू स्पष्ट करण्याची वाजवी संधी देईल.

(५) उक्त आस्थापनेत सूट देण्यात आली नसती तर (उक्त अधिनियमाच्या कलम २(च) (मध्ये व्याख्या केल्याप्रमाणे) भविष्यनिर्वाह निधीचे सदस्य होण्यास पात्र ठरले असते. त्या सर्व कर्मचाऱ्यांची सदस्य म्हणून नोंदणी करण्यात येईल.

(६) कर्मचारी अगोदरच, कर्मचारी भविष्यनिर्वाह निधी (सांविधिक) किंवा अन्य कोणत्याही सूट देण्यात आलेल्या आस्थापनेच्या भविष्यनिर्वाह निधीचा सदस्य असल्यास, सेवा नियोक्ता, निधीचा सदस्य म्हणून लगेचच त्याचे नाव नोंदवील आणि अशा कर्मचाऱ्यांच्या पूर्वीच्या नियोक्त्याकडील त्याच्या भविष्यनिर्वाह लेख्यातील संचयित रक्कम हस्तांतरित करण्याची आणि ती रक्कम त्याच्या खात्यात जमा करण्याची व्यवस्था करील.

(७) नियोक्ता, केंद्रीय भविष्यनिर्वाह निधी आयुक्त किंवा यथास्थित, केंद्र शासन, वेळोवेळी, देऊ शकेल अशा निर्देशांनुसार भविष्यनिर्वाह निधीच्या व्यवस्थापनासाठी विश्वस्त मंडळाची स्थापना करील.

(८) भविष्यनिर्वाह निधी विश्वस्त मंडळाकडे विहित असेल व कर्मचारी भविष्यनिर्वाह निधीच्या संघटनासाठी त्याबरोबरच भविष्यनिर्वाह निधीत जमा होणारी रक्कम आणि भविष्यनिर्वाह निधीतून केलेली प्रदाने आणि त्याच्या अभिरक्षेतील शिल्लक रकमा यांचा योग्य जमा खर्च ठेवण्यासाठी जबाबदार असेल आणि त्यासाठी उत्तरदायी असेल.

(९) प्रत्येक तीन महिन्यांतून किमान एकदा विश्वस्त मंडळाची बैठक बोलावण्यात येईल आणि केंद्र शासन/केंद्रीय भविष्यनिर्वाह निधी आयुक्त किंवा त्याने प्राधिकृत केलेला अधिकारी यांनी जारी केलेल्या मार्गदर्शक तत्त्वांनुसार त्याचे काम चालेल.

(१०) विश्वस्त मंडळाने ठेवलेल्या भविष्यनिर्वाह निधीचे लेखे, दरवर्षी, अर्हताप्राप्त स्वतंत्र सनदी लेखापालाकडून लेखापरीक्षा केली जाण्यास अधीन असतील, केंद्रीय भविष्यनिर्वाह निधी आयुक्तास आवश्यक वाटेल तेव्हा लेख्यांची अन्य कोणत्याही अर्हताप्राप्त लेखा परीक्षकांकडून पुन्हा लेखापरीक्षा करवून घेण्याचा अधिकारी असेल आणि त्यासाठी करण्यात आलेला खर्च नियोक्त्याकडून उचलला जाईल.

(११) वित्तीय वर्षाच्या समाप्तीनंतर सहा महिन्यांच्या आत, प्रत्येक लेखावर्षातील लेखापरीक्षेत वार्षिक भविष्यनिर्वाह निधी लेख्यांची एक प्रत आस्थापनेच्या लेखापरीक्षित ताळेबंदासह, प्रादेशिक भविष्यनिर्वाह निधी आयुक्ताकडे सादर करण्यात येईल. या प्रयोजनार्थ, भविष्यनिर्वाह निधीचे वित्तीय वर्ष १ एप्रिल ते ३१ मार्च असे असेल.

(१२) नियोक्ता त्याच्याकडून आणि कर्मचाऱ्याकडून देय असलेले भविष्यनिर्वाह निधीचे अंशदान, ज्या महिन्याचे अंशदान देय असेल त्यापुढील प्रत्येक महिन्याच्या १५ तारखेपर्यंत विश्वस्त मंडळाकडे हस्तांतरित करील. अंशदान भरण्यास कोणताही विलंब झाल्यास नियोक्ता तशाच प्रकारच्या परिस्थितीमध्ये सूट न मिळालेली आस्थापना ज्या रितीने हानीची रक्कम भरण्यास पात्र असते, त्याच रितीने विश्वस्त मंडळाकडे हानीची रक्कम भरण्यास पात्र असेल.

(१३) शासनाकडून वेळोवेळी देण्यात आलेल्या निर्देशांनुसार, विश्वस्त मंडळ, निधीमधील पैशांची गुंतवणूक करील. विश्वस्त मंडळाच्या नावाने रोखे काढण्यात येतील आणि ते भारतीय रिझर्व्ह बँकेच्या पतनियंत्रणाखालील अनुसूचित बँकांच्या अभिरक्षेत ते ठेवण्यात येतील.

(१४) शासनाच्या निदेशानुसार गुंतवणूक करण्यात कसूर केल्यास, विश्वस्त मंडळ, केंद्रीय भविष्यनिर्वाह निधी आयुक्त किंवा त्यांचा प्रतिनिधी यांच्याकडून पृथःकपणे आणि संयुक्तपणे अधिभार लादला जाण्यास पात्र ठरेल.

(१५) विश्वस्त मंडळ लिखित नोंदवही ठेवील आणि व्याजाची वसुली व पूर्वीचे विमोचन वेळेवर होत असल्याची खातरजमा करील.

(१६) विश्वस्त मंडळ प्रत्येक कर्मचाऱ्यांच्या बाबतीत, त्यांनी जमा केलेले अंशदान आणि त्यातून काढलेल्या रकमा व व्याज दर्शविणारे तपशीलवार लेखे ठेवील.

(१७) मंडळ, वित्तीय लेखांकन वर्षाच्या समाप्तीपासून सहा महिन्यांच्या आत, प्रत्येक कर्मचाऱ्यास, वार्षिक लेखा विवरणपत्र देईल.

(१८) मंडळाला, प्रत्येक कर्मचाऱ्यास वार्षिक लेखा विवरणपत्राऐवजी पासबुक देता येईल. ही पासबुके कर्मचाऱ्यांच्या ताब्यात असतील आणि कर्मचाऱ्याने ती सादर केल्यानंतर, मंडळ ती अद्ययावत भरून देईल.

(१९) प्रत्येक कर्मचाऱ्याच्या खात्यामध्ये, लेखांकन वर्षाच्या पहिल्या दिवशीच्या प्रारंभिक शिल्लक रकमेवर विश्वस्त मंडळ ठरवील अशा दराने काढण्यात आलेले व्याज जमा करण्यात येईल. मात्र हा दर, उक्त योजनेच्या परिच्छेद ६० खाली केंद्र शासनाने जाहीर केलेल्या दरापेक्षा कमी असणार नाही.

(२०) गुंतवणुकीवरील प्राप्ती कमी झाल्यामुळे किंवा अन्य कोणत्याही कारणामुळे केंद्र शासनाने जाहीर केलेल्या दराने व्याज देण्यास विश्वस्त मंडळ असमर्थ असल्यास, ही कमतरता नियोक्ता भरून काढील.

(२१) नियोक्ता चोरी, घरफोडी, अफरातफर, दुर्विनियोग किंवा अन्य कोणतेही कारण यांमुळे भविष्यनिर्वाह निधीची झालेली कोणतीही हानी भरून काढील.

(२२) केंद्र शासन/केंद्रीय भविष्यनिर्वाह निधी आयुक्त वेळोवेळी विहित करील अशी विवरणपत्रे नियोक्ता तसेच विश्वस्त मंडळ प्रादेशिक भविष्यनिर्वाह निधी आयुक्तांकडे सादर करील.

(२३) योजनेच्या परिच्छेद ६९ च्या आधारे, कर्मचारी निधीचा सदस्य असणे बंद होईल त्याबाबतीत, नियोक्त्यांचे अंशदान समपहृत करण्याची तरतूद आस्थापनेच्या भविष्यनिर्वाह निधी नियमांमध्ये करण्यात आली असल्यास, विश्वस्त मंडळ अशा समपहृत रकमेचा हिशेब स्वतंत्रपणे ठेवील आणि केंद्रीय भविष्यनिर्वाह निधी आयुक्तांची पूर्वमान्यता घेऊन तो निर्धारित करील अशा प्रयोजनांसाठी तो उपयोगात आणील.

(२४) आस्थापनेच्या भविष्यनिर्वाह निधी नियमांमध्ये काहीही अंतर्भूत असले तरी, आस्थापनेचा कर्मचारी असण्याचे बंद झाल्यामुळे कोणत्याही सदस्यास, कर्मचारी व नियोक्ता यांचे अंशदान अधिक त्यावरील व्याजासह, उपदान किंवा निवृत्तिवेतन नियम यांखाली देय असलेली कोणतीही रक्कम ही, तो जर, उक्त योजनेखाली भविष्यनिर्वाह निधीचा सदस्य असता तर त्याला कर्मचारी व नियोक्त्याचे अंशदान अधिक त्यावरील व्याज या पोटी जितकी रक्कम देय झाली असती त्या रकमेपेक्षा कमी असल्यास, तिच्यातील तफावतीची रक्कम नुकसानभरपाई किंवा विशेष अंशदान म्हणून नियोक्ता भरील.

(२५) लेखे ठेवणे, विवरणपत्रे सादर करणे, संचित रक्कम हस्तांतरित करणे यांसह, भविष्यनिर्वाह निधीचा व्यवहार चालविताना होणारे सर्व खर्च नियोक्ता करील.

(२६) नियोक्ता, समुचित प्राधिकाऱ्याने मान्यता दिलेल्या निधीच्या नियमांची एक प्रत आणि त्यात जसजशा सुधारणा करण्यात येतील त्या सुधारणा, जास्तीत जास्त कर्मचाऱ्यांना समजेल अशा भाषेमध्ये भाषांतरित केलेल्या त्यातील ठळक मुद्यांसह आस्थापनेच्या सूचना फलकावर लावील.

(२७) समुचित शासनास, आस्थापनेला देण्यात आलेली सूट चालू ठेवण्यासाठी आणखी कोणत्याही शर्ती घालता येतील.

(२८) नियोक्ता, ज्या आस्थापना वर्गात त्याची आस्थापना येते त्या वर्गासाठी असलेल्या भविष्यनिर्वाह निधीच्या अंशदानाच्या दरात उक्त अधिनियमांन्वये वाढ करण्यात आल्यास, भविष्यनिर्वाह निधीच्या अंशदानाच्या दरात योग्य ती वाढ करील, जेणेकरून उक्त अधिनियमांन्वये मिळणारे लाभ मिळू शकतील.

(२९) वरीलपैकी कोणत्याही शर्तींचा भंग करण्यात आल्यास, देण्यात आलेली सूट रद्द केली जाण्यास पात्र असेल.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

रविकुमार पाटणकर,
कक्ष अधिकारी.

In pursuance of Clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. EPF. 2010/C.R. 15/LAB-4, dated the 26th May 2014 is hereby published under the authority of the Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Hutatma Rajguru Chowk, Madam Cama Road,
Mantralaya, Mumbai 400 032, dated the 26th May 2014.

NOTIFICATION

EMPLOYEES' PROVIDENT FUNDS SCHEME, 1952.

No. EPF. 2010/C.R. 15/Lab-4.—The Government of Maharashtra is hereby exempts, M/s. Kirloskar Ebara Pumps Ltd., Pride Kumar Senate Building, Senapati Bapat Road, Pune 411 016 (hereinafter referred to as the said establishment), who has applied for exemption under clause 27(A) of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Act) ;

And Whereas, in the opinion of the Central Government, the rules of the Provident Fund of the said establishment with respect to the rates of contribution are not less favourable to the employees therein that those specified in Section 6 of the said Act and the empoyees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Scheme) in relation to the employees in any other etablishment of a similar character ;

Now Therefore in excercise of the powers conferred by clause 17(A) of the said scheme and subject to the conditions specified in the Schedule annexed hereto, the State Government hereby exempts only class of employees of the said establishment from the operation of all the provisions of the said scheme with effect from 1st October 1994.

Schedule

(*1*) The employer in relation to the said establishment shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under Clause (*a*) of sub-section (*3*) of section 17 of the said Act within 15 days from the close of every month.

(*2*) The rate of contribution payable under the provident fund rules of the establishment shall at no time be lower than those payable under the said Act in respect of the unexempted establishment and the said Scheme framed thereunder.

(*3*) In the matter of advance, the scheme of the exempted establishment shall not be less favourable than the Employees' Provident Fund Scheme, 1952.

(*4*) Any amendment to the said Scheme which is more beneficial to the employees than the existing rule of the establishment shall be made applicable to them automatically. No amendment to the rules of the Provident Fund of the said establishment shall be made without the previous approval of the Regional Provident Fund Commissioner and where any amendment is likely to affect adversely the interest of the employees of the said establishment, the Regional Provident Fund Commissioner shall before giving his approval, give a reasonable opportunity to the employees to explain their point of view.

(*5*) All employees (as defined in section 2(*f*) of the said Act) who would have been eligible to become members of the Provident Fund, had the establishment not been granted exemption shall be enrolled as members.

(*6*) Where an employee who is already a member of Emoloyees' Provident Fund (Statutory) or a Provident Fund of any other exempted establishment, the employer shall immediately enroll him as a member of the fund and arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited to his account.

(*7*) The employer shall establish a Board of Trustees for the management of the Provident Fund according to such directions as may he given by the Central Provident Fund Commissioner or by the Central Government, as the case may be from time to time.

(*8*) The Provident Fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Fund organization *inter-alia* for proper accounts of the receipts into and payments from the Provident Fund and the balance in their custody.

(*9*) The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/ Central Provident Fund Commissioner or an officer authorized by him.

(*10*) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary, the Central Provident Fund Commissioner shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(*11*) A copy of the audited annual Provident Fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of the financial year. For this purpose the financial year of the Provident Fund shall be from 1st of April to the 31st March.

(*12*) The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and the employees by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay Damages to the Board of Trustees for any delay in payment of the contributions in the same manner as an unexempted establishment is liable under similar circumstances.

(*13*) The Board of Trustees shall invest the money in the fund as per directions that may be given by the Government from time to time. The securities shall be obtained in the name of the Board of Trustees and shall be kept in the custody of a Scheduled Bank under the Credit Control of the Reserve Bank of India.

(*14*) Failure to make the investments as per directions of the Government shall make the Board of Trustees severally and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

(*15*) The Board of Trustees shall maintain a script-wise register and ensure timely realization of interest and redemption proceeds.

(*16*) The Board of Trustees shall maintain detailed accounts to show the contribution credited, withdrawal and interest in respect of each employee.

(*17*) The Board shall issue an annual statement of account to every employee within six months of the close of financial/accounting year.

(*18*) The Board may, instead of the annual statement of account issue passbooks to every employee. Those passbooks shall remain in the custody of the employees and shall be brought upto date, by the Board on presentation by the employees.

(*19*) The account of each employee shall be credited with interest calculated on the opening balance as on the 1st day of the accounting year at such rate as may be decided by the Board of Trustees but shall not be lower than the rate declared by the Central Government under para 60 of the said Scheme.

(*20*) If the Board of Trustees are unable to pay interest at the rate declared by the Central Government for the reason that the return on investment is less or for any other reason, than the deficiency shall be made good by the employer.

(*21*) The employer shall also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, mis-appropriation or any other reason.

(*22*) The employer as well as the Board of Trustees shall submit such returns to the Regional Provident Fund Commissioner as the Central Government/Central Provident Fund Commissioner may prescribe from time to time.

(*23*) If the Provident Fund rules of the establishment provide for forfeiture of the employers' contributions in cases where an employee ceases to be a member of the fund on the lines of para 69 of the Scheme, the Board of Trustees shall maintain a separate account of the amounts so forfeited and may utilise the same for such purpose as may be determined with the prior approval of the Central Provident Fund Commissioner.

(*24*) Notwithstanding anything contained in the rules of the Provident Fund of the establishment, if the amount payable to any member upon his ceasing to be an employee of the establishment by way of employer and employees' contribution plus interest thereon taken together with the amount, if any payable under the Gratuity or Pension rules be less than the amount that would he payable as employer's and employees' contributions plus interest thereon if he were a member of the Provident Fund under the said Scheme, the employer shall pay the difference to the member as compensation or special contribution.

(*25*) The employer shall bear all the expenses of the administration of the Provident Fund including the maintenance of accounts, submission of returns, transfer of accumulations.

(*26*) The employer shall display on notice board of the establishment, a copy of the rules of the fund as approved by the appropriate authority and as and when amended thereto alongwith a translation of the salient points thereof in the language of the majority of the employees.

(*27*) The "Appropriate Government" may lay down any further conditions for continued exemption of the establishment.

(*28*) The employer shall enhance the rate of Provident Fund contributions appropriately if the rate of Provident Fund conrtibution for the class of establishments in which his establishment falls is enhanced under the said Act so that the benefits provided under the said Act.

(*29*) The exemption is liable to be cancelled for violation of any of the above conditions.

By order and in the name of the Governor of Maharashtra,

RAVEEKUMAR PATANKAR,
Section Officer.

१३२

सोमवार, मे २६, २०१४/ज्येष्ठ ५, शके १९३६

उद्योग, ऊर्जा व कामगार विभाग

मंत्रालय विस्तार, हुतात्मा राजगुरु चौक, मादाम कामा रोड,
मुंबई ४०० ०३२, दिनांक २६ मे २०१४.

अधिसूचना

कर्मचारी भविष्य निर्वाह निधी व संकीर्ण उपबंध अधिनियम, १९५२.

क्रमांक इपीएफ. २०१३/प्र.क्र. १४४/कामगार-४.— ज्या अर्थी, कर्मचारी भविष्य निर्वाह निधी व संकीर्ण उपबंध अधिनियम, १९५२ च्या कलम १७(१)(अ) खाली ज्यांनी सूट मिळण्यासाठी मे. इंटरव्हेट इंडिया प्रा. लि., " इंटरव्हेट हाऊस ", ३३, पुणे-नगर रोड, पुणे ४११ ०१४ या आस्थापनेनेच राज्य शासनाकडे अर्ज केला आहे (यात यापुढे जिचा उक्त आस्थापना असा निर्देश करण्यात आला आहे) ;

आणि ज्याअर्थी, केंद्र शासनाच्या मते, उक्त आस्थापनेतील कर्मचाऱ्यांच्या अंशदानाच्या दरांच्या बाबतीत, भविष्य निर्वाह निधीचे नियम हे, उक्त अधिनियमाच्या कलम ६ मध्ये विर्निदिष्ट केलेल्या दरांपेक्षा कमी अनुकूल नाहीत आणि कर्मचाऱ्यांना भविष्य निर्वाह निधीचे अन्य लाभही तशाच स्वरूपाच्या अन्य कोणत्याही आस्थापनेतील कर्मचाऱ्यांच्या संबंधात, उक्त अधिनियमाखाली किंवा कर्मचारी भविष्य निर्वाह निधी योजना, १९५२ (यात यापुढे जिचा निर्देश उक्त योजना असा करण्यात आला आहे), याखाली त्या कर्मचाऱ्यांना मिळत असलेल्या लाभांपेक्षा एकंदरीत कमी अनुकूल नाहीत ;

त्याअर्थी, आता, कर्मचारी भविष्य निर्वाह निधी व संकीर्ण उपबंध अधिनियम, १९५२ च्या कलम १७(१) (अ) द्वारे प्रदान करण्यात आलेल्या अधिकारांचा वापर करून, आणि यासोबत जोडलेल्या अनुसूचीमध्ये विनिर्दिष्ट केलेल्या शर्तींच्या अधीनतेने, राज्य शासन, याद्वारे, उक्त आस्थापनेस उक्त योजनेच्या सर्व तरतुदींचे प्रवर्तन करण्यातून दिनांक १ ऑगस्ट १९९६ पासून पूर्वलक्षी प्रभावाने सूट देत आहे.

अनुसूची

(१) उक्त आस्थापनेच्या संबंधातील नियोक्ता महिन्या अखेरीपासून पंधरा दिवसांच्या आत, उक्त अधिनियमांच्या कलम १७, पोट-कलम (३) खंड (क) अन्वये, केंद्र शासन, वेळोवेळी निदेश देईल, त्याप्रमाणे तपासणी करण्याची सुविधा उपलब्ध करून देण्याची आणि तपासणी खर्च देण्याची तरतूद करील.

(२) या आस्थापनेच्या भविष्य निर्वाह निधीनियमांखाली देय असलेला अंशदानाचा दर हा, सूट देण्यात न आलेल्या आस्थापनांच्या बाबतीत उक्त अधिनियमांन्वये आणि त्याखाली तयार करण्यात आलेल्या उक्त योजनेन्वये कोणत्याही परिस्थितीत कमी असणार नाही.

(३) आगाऊ रकमांच्या बाबतीत, सूट देण्यात आलेल्या आस्थापनेची योजना ही, कर्मचारी भविष्य निर्वाह निधी योजना, १९५२ पेक्षा कमी अनुकूल असणार नाही.

(४) उक्त योजनेतील कोणतीही सुधारणा ही, आस्थापनेच्या विद्यमान नियमांपेक्षा कर्मचाऱ्यांना अधिक लाभप्रद असल्यास, ती आपोआप लागू करण्यात येईल. उक्त आस्थापनेच्या भविष्य निर्वाह निधी नियमांतील कोणतीही सुधारणा ही, प्रादेशिक भविष्य निर्वाह निधी आयुक्तांच्या पूर्वमान्यतेशिवाय केली जाणार नाही आणि कोणत्याही सुधारणेमुळे उक्त आस्थापनेतील कर्मचाऱ्यांच्या हितास बाधा पोहोचण्याचा संभव असल्यास, प्रादेशिक भविष्य निर्वाह निधी आयुक्त मान्यता देण्यापूर्वी, कर्मचाऱ्यांस त्यांची बाजू स्पष्ट करण्याची वाजवी संधी देईल.

(५) उक्त आस्थापनेत सूट देण्यात आली नसती तर [उक्त अधिनियमाच्या कलम २(च) मध्ये व्याख्या केल्याप्रमाणे] भविष्य निर्वाह निधीचे सदस्य होण्यास पात्र ठरले असते. त्या सर्व कर्मचाऱ्यांची सदस्य म्हणून नोंदणी करण्यात येईल.

(६) कर्मचारी अगोदरच, कर्मचारी भविष्य निर्वाह निधी (सांविधिक) किंवा अन्य कोणत्याही सूट देण्यात आलेल्या आस्थापनेच्या भविष्य निर्वाह निधीचा सदस्य असल्यास, सेवा नियोक्ता, निधीचा सदस्य म्हणून लगेचच त्याचे नाव नोंदवील आणि अशा कर्मचाऱ्यांच्या पूर्वीच्या नियोक्त्याकडील त्याच्या भविष्य निर्वाह लेख्यातील संचयित रक्कम हस्तांतरित करण्याची आणि ती रक्कम त्याच्या खात्यात जमा करण्याची व्यवस्था करील.

(७) नियोक्ता, केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा यथास्थित, केंद्र शासन, वेळोवेळी, देऊ शकेल अशा निर्देशांनुसार भविष्य निर्वाह निधीच्या व्यवस्थापनासाठी विश्वस्त मंडळाची स्थापना करील.

(८) भविष्य निर्वाह निधी विश्वस्त मंडळाकडे विहित असेल व कर्मचारी भविष्य निर्वाह निधीच्या संघटनासाठी त्याबरोबरच भविष्य निर्वाह निधीत जमा होणारी रक्कम आणि भविष्य निर्वाह निधीतून केलेली प्रदाने आणि त्याच्या अभिरक्षेतील शिल्लक रकमा यांचा योग्य जमा खर्च ठेवण्यासाठी जबाबदार असेल आणि त्यासाठी उत्तरदायी असेल.

(९) प्रत्येक तीन महिन्यांतून किमान एकदा विश्वस्त मंडळाची बैठक बोलावण्यात येईल आणि केंद्र शासन/केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा त्याने प्राधिकृत केलेला अधिकारी यांनी जारी केलेल्या मार्गदर्शक तत्त्वांनुसार त्याचे काम चालेल.

(१०) विश्वस्त मंडळाने ठेवलेल्या भविष्य निर्वाह निधीचे लेखे, दरवर्षी, अर्हताप्राप्त स्वतंत्र सनदी लेखापालाकडून लेखापरीक्षा केली जाण्यास अधीन असतील, केंद्रीय भविष्य निर्वाह निधी आयुक्तास आवश्यक वाटेल तेव्हा लेख्यांची अन्य कोणत्याही अर्हताप्राप्त लेखा परीक्षकांकडून पुन्हा लेखापरीक्षा करवून घेण्याचा अधिकारी असेल आणि त्यासाठी करण्यात आलेला खर्च नियोक्त्याकडून उचलला जाईल.

(११) वित्तीय वर्षाच्या समाप्तीनंतर सहा महिन्यांच्या आत, प्रत्येक लेखावर्षातील लेखापरीक्षेत वार्षिक भविष्य निर्वाह निधी लेख्यांची एक प्रत आस्थापनेच्या लेखापरीक्षित ताळेबंदासह, प्रादेशिक भविष्यनिर्वाह निधी आयुक्ताकडे सादर करण्यात येईल. या प्रयोजनार्थ, भविष्य निर्वाह निधीचे वित्तीय वर्ष १ एप्रिल ते ३१ मार्च असे असेल.

(१२) नियोक्ता त्याच्याकडून आणि कर्मचाऱ्याकडून देय असलेले भविष्य निर्वाह निधीचे अंशदान, ज्या महिन्याचे अंशदान देय असेल त्यापुढील प्रत्येक महिन्याच्या १५ तारखेपर्यंत विश्वस्त मंडळाकडे हस्तांतरित करील. अंशदान भरण्यास कोणताही विलंब झाल्यास नियोक्ता तशाच प्रकारच्या परिस्थितीमध्ये सूट न मिळालेली आस्थापना ज्या रितीने हानीची रक्कम भरण्यास पात्र असते, त्याच रितीने विश्वस्त मंडळाकडे हानीची रक्कम भरण्यास पात्र असेल.

(१३) शासनाकडून वेळोवेळी देण्यात आलेल्या निर्देशांनुसार, विश्वस्त मंडळ, निधीमधील पैशांची गुंतवणूक करील. विश्वस्त मंडळाच्या नावाने रोखे काढण्यात येतील आणि ते भारतीय रिझर्व्ह बँकेच्या पतनियंत्रणाखालील अनुसूचित बँकांच्या अभिरक्षेत ते ठेवण्यात येतील.

(१४) शासनाच्या निदेशानुसार गुंतवणूक करण्यात कसूर केल्यास, विश्वस्त मंडळ, केंद्रीय भविष्य निर्वाह निधी आयुक्त किंवा त्यांचा प्रतिनिधी यांच्याकडून पृथकपणे आणि संयुक्तपणे अधिभार लादला जाण्यास पात्र ठरेल.

(१५) विश्वस्त मंडळ लिखित नोंदवही ठेवील आणि व्याजाची वसुली व पूर्वीचे विमोचन वेळेवर होत असल्याची खातरजमा करील.

(१६) विश्वस्त मंडळ प्रत्येक कर्मचाऱ्यांच्या बाबतीत, त्यांनी जमा केलेले अंशदान आणि त्यातून काढलेल्या रकमा व व्याज दर्शविणारे तपशीलवार लेखे ठेवील.

(१७) मंडळ, वित्तीय लेखांकन वर्षाच्या समाप्तीपासून सहा महिन्यांच्या आत, प्रत्येक कर्मचाऱ्यास, वार्षिक लेखा विवरणपत्र देईल.

(१८) मंडळाला, प्रत्येक कर्मचाऱ्यास वार्षिक लेखा विवरणपत्राऐवजी पासबुक देता येईल. ही पासबुके कर्मचाऱ्यांच्या ताब्यात असतील आणि कर्मचाऱ्याने ती सादर केल्यानंतर, मंडळ ती अद्ययावत भरून देईल.

(१९) प्रत्येक कर्मचाऱ्याच्या खात्यामध्ये, लेखांकन वर्षाच्या पहिल्या दिवशीच्या प्रारंभिक शिल्लक रकमेवर विश्वस्त मंडळ ठरवील अशा दराने काढण्यात आलेले व्याज जमा करण्यात येईल. मात्र हा दर, उक्त योजनेच्या परिच्छेद ६० खाली केंद्र शासनाने जाहीर केलेल्या दरापेक्षा कमी असणार नाही.

(२०) गुंतवणुकीवरील प्राप्ती कमी झाल्यामुळे किंवा अन्य कोणत्याही कारणामुळे केंद्र शासनाने जाहीर केलेल्या दराने व्याज देण्यास विश्वस्त मंडळ असमर्थ असल्यास, ही कमतरता नियोक्ता भरून काढील.

(२१) नियोक्ता चोरी, घरफोडी, अफरातफर, दुर्विनियोग किंवा अन्य कोणतेही कारण यांमुळे भविष्य निर्वाह निधीची झालेली कोणतीही हानी भरून काढील.

(२२) केंद्र शासन/केंद्रीय भविष्य निर्वाह निधी आयुक्त वेळोवेळी विहित करील अशी विवरणपत्रे नियोक्ता तसेच विश्वस्त मंडळ प्रादेशिक भविष्य निर्वाह निधी आयुक्तांकडे सादर करील.

(२३) योजनेच्या परिच्छेद ६९ च्या आधारे, कर्मचारी निधीचा सदस्य असणे बंद होईल त्याबाबतीत, नियोक्त्यांचे अंशदान समाप्त करण्याची तरतूद आस्थापनेच्या भविष्य निर्वाह निधी नियमांमध्ये करण्यात आली असल्यास, विश्वस्त मंडळ अशा समाप्त रकमेचा हिशेब स्वतंत्रपणे ठेवील आणि केंद्रीय भविष्य निर्वाह निधी आयुक्तांची पूर्वमान्यता घेऊन तो निर्धारित करील अशा प्रयोजनांसाठी तो उपयोगात आणील.

(२४) आस्थापनेच्या भविष्य निर्वाह निधी नियमांमध्ये काहीही अंतर्भूत असले तरी, आस्थापनेचा कर्मचारी असण्याचे बंद झाल्यामुळे कोणत्याही सदस्यास, कर्मचारी व नियोक्ता यांचे अंशदान अधिक त्यावरील व्याजासह, उपदान किंवा निवृत्तिवेतन नियम यांखाली देय असलेली कोणतीही रक्कम ही, तो जर, उक्त योजनेखाली भविष्य निर्वाह निधीचा सदस्य असता तर त्याला कर्मचारी व नियोक्त्याचे अंशदान अधिक त्यावरील व्याज या पोटी जितकी रक्कम देय झाली असती त्या रकमेपेक्षा कमी असल्यास, तिच्यातील तफावतीची रक्कम नुकसान भरपाई किंवा विशेष अंशदान म्हणून नियोक्ता भरील.

(२५) लेखे ठेवणे, विवरणपत्रे सादर करणे, संचित रक्कम हस्तांतरित करणे यांसह, भविष्य निर्वाह निधीचा व्यवहार चालविताना होणारे सर्व खर्च नियोक्ता करील.

(२६) नियोक्ता, समुचित प्राधिकाऱ्याने मान्यता दिलेल्या निधीच्या नियमांची एक प्रत आणि त्यात जसजशा सुधारणा करण्यात येतील त्या सुधारणा, जास्तीत जास्त कर्मचाऱ्यांना समजेल अशा भाषेमध्ये भाषांतरित केलेल्या त्यातील ठळक मुद्यांसह आस्थापनेच्या सूचना फलकावर लावील.

(२७) समुचित शासनास, आस्थापनेला देण्यात आलेली सूट चालू ठेवण्यासाठी आणखी कोणत्याही शर्ती घालता येतील.

(२८) नियोक्ता, ज्या आस्थापना वर्गात त्याची आस्थापना येते त्या वर्गासाठी असलेल्या भविष्यनिर्वाह निधीच्या अंशदानाच्या दरात उक्त अधिनियमांन्वये वाढ करण्यात आल्यास, भविष्य निर्वाह निधीच्या अंशदानाच्या दरात योग्य ती वाढ करील, जेणेकरून उक्त अधिनियमांन्वये मिळणारे लाभ मिळू शकतील

(२९) वरीलपैकी कोणत्याही शर्तींचा भंग करण्यात आल्यास, देण्यात आलेली सूट रद्द केली जाण्यास पात्र असेल.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

रविकुमार पाटणकर,
कक्ष अधिकारी.

In pursuance of Clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. EPF. 2013/C.R. 144/LAB-4, dated the 26th May 2014 is hereby published under the authority of the Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya Annexe, Hutatma Rajguru Chowk, Madam Cama Road,
Mumbai 400 032, dated the 26th May 2014.

NOTIFICATION

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952.

No. EPF. 2013/C.R. 144/Lab-4.—Whereas, M/s. Intervet India Pvt. Ltd., ' Intervet House ', 33, Pune-Nagar Road, Pune 411 014 (hereinafter referred to as the said establishment), who has applied for exemption under clause 17(1)(*a*) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) ;

And Whereas, in the opinion of the Central Government, the rules of the Provident Fund of the said establishment with respect to the rates of contribution are not less favourable to the employees therein that those specified in Section 6 of the said Act and the empoyees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Scheme) in relation to the employees in any other etablishment of a similar character ;

Now, therefore in excercise of the powers conferred by clause 17(1)(*a*) of the said Act and subject to the conditions specified in the Schedule annexed hereto, the State Government hereby exempts the said establishment from the operation of all the provisions of the said Act with effect from 1st August 1996.

Schedule

(1) The employer in relation to the said establishment shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under Clause (*a*) of sub-section (*3*) of section 17 of the said Act within 15 days from the close of every month.

(2) The rate of contribution payable under the provident fund rules of the establishment shall at no time be lower than those payable under the said Act in respect of the unexempted establishment and the said Scheme framed thereunder.

(3) In the matter of advance, the scheme of the exempted establishment shall not be less favourable than the Employees' Provident Fund Scheme, 1952.

(4) Any amendment to the said Scheme which is more beneficial to the employees than the existing rule of the establishment shall be made applicable to them automatically. No amendment to the rules of the Provident Fund of the said establishment shall be made without the previous approval of the Regional Provident Fund Commissioner and where any amendment is likely to affect adversely the interest of the employees of the said establishment, the Regional Provident Fund Commissioner shall before giving his approval, give a reasonable opportunity to the employees to explain their point of view.

(5) All employees [as defined in section 2(*f*) of the said Act] who would have been eligible to become members of the Provident Fund, had the establishment not been granted exemption shall be enrolled as members.

(6) Where an employee who is already a member of Emoloyees' Provident Fund (Statutory) or a Provident Fund of any other exempted establishment, the employer shall immediately enroll him as a member of the fund and arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited to his account.

(7) The employer shall establish a Board of Trustees for the management of the Provident Fund according to such directions as may he given by the Central Provident Fund Commissioner or by the Central Government, as the case may be from time to time.

(8) The Provident Fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees Provident Fund organization *inter-alia* for proper accounts of the receipts into and payments from the Provident Fund and the balance in their custody.

(9) The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/ Central Provident Fund Commissioner or an officer authorized by him.

(10) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary, the Central Provident Fund Commissioner shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be home by the employer.

(11) A copy of the audited annual Provident Fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of the financial year. For this purpose the financial year of the Provident Fund shall be from 1st of April to the 31st March.

(12) The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and the employees by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay Damages to the Board of Trustees for any delay in payment of the contributions in the same manner as an unexempted establishment is liable under similar circumstances.

(13) The Board of Trustees shall invest the money in the fund as per directions that may be given by the Government from time to time. The securities shall be obtained in the name of the Board of Trustees and shall be kept in the custody of a Scheduled Bank under the Credit Control of the Reserve Bank of India.

(14) Failure to make the investments as per directions of the Government shall make the Board of Trustees severally and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

(15) The Board of Trustees shall maintain a script-wise register and ensure timely realization of interest and redemption proceeds.

(16) The Board of Trustees shall maintain detailed accounts to show the contribution credited, withdrawal and interest in respect of each employee.

(17) The Board shall issue an annual statement of account to every employee within six months of the close of financial/accounting year.

(18) The Board may, instead of the annual statement of account issue passbooks to every employee. Those passbooks shall remain in the custody of the employees and shall be brought upto date, by the Board on presentation by the employees.

(19) The account of each employee shall be credited with interest calculated on the opening balance as on the 1st day of the accounting year at such rate as may be decided by the Board of Trustees but shall not be lower than the rate declared by the Central Government under para 60 of the said Scheme.

(20) If the Board of Trustees are unable to pay interest at the rate declared by the Central Government for the reason that the return on investment is less or for any other reason, than the deficiency shall be made good by the employer.

(21) The employer shall also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, mis-appropriation or any other reason.

(22) The employer as well as the Board of Trustees shall submit such returns to the Regional Provident Fund Commissioner as the Central Government/Central Provident Fund Commissioner may prescribe from time to time.

(23) If the Provident Fund rules of the establishment provide for forfeiture of the employers' contributions in cases where an employee ceases to be a member of the fund on the lines of para 69 of the Scheme, the Board of Trustees shall maintain a separate account of the amounts so forfeited and may utilise the same for such purpose as may be determined with the prior approval of the Central Provident Fund Commissioner.

(24) Notwithstanding anything contained in the rules of the Provident Fund of the establishment, if the amount payable to any member upon his ceasing to be an employee of the establishment by way of employer and employees' contribution plus interest thereon taken together with the amount, if any payable under the Gratuity or Pension rules be less than the amount that would he payable as employer's and employees' contributions plus interest thereon if he were a member of the Provident Fund under the said Scheme, the employer shall pay the difference to the member as compensation or special contribution.

(25) The employer shall bear all the expenses of the administration of the Provident Fund including the maintenance of accounts, submission of returns, transfer of accumulations.

(26) The employer shall display on notice board of the establishment, a copy of the rules of the fund as approved by the appropriate authority and as and when amended thereto alongwith a translation of the salient points thereof in the language of the majority of the employees.

(27) The "Appropriate Government" may lay down any further conditions for continued exemption of the establishment.

(28) The employer shall enhance the rate of Provident Fund contributions appropriately if the rate of Provident Fund conrtibution for the class of establishments in which his establishment falls is enhanced under the said Act so that the benefits provided under the said Act.

(29) The exemption is liable to be cancelled for violation of any of the above conditions.

By order and in the name of the Governor of Maharashtra,

RAVEEKUMAR PATANKAR,
Section Officer to Government.

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